15

TRANSCRIPT OF RECORD.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

RECORD: VOLUME III.

[redacted]

[redacted]

[redacted]

50
1480(1)

93319

In the District Court of the United States, Southern District of New York.

In Equity, No. 11-139.

UNITED STATES OF AMERICA, *Petitioner*,

v.

LEHIGH VALLEY RAILROAD CO. ET. AL., *Defendants*.

RECORD: VOLUME III.

DEFENDANTS' EVIDENCE AND EXHIBITS.

[illegible]

INDEX.

Examiner's Certificate 1110a

DEFENDANTS' WITNESSES.

Baird, D. G.: (L. V. R. R. Co.)
- Direct (Mr. Boles) 1112
- Direct (Mr. Howland) 1140
- Cross (Mr. Machen) 1143
- Re-direct (Mr. Boles) 1153
- Re-direct (Mr. Wheaton) 1155
- Re-cross (Mr. Machen) 1155
- Exhibits: Girard Trust Co. Nos. 1 and 2; Lehigh Valley R. R. Co. Nos. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31.

Barr, Harry C.: (L. V. R. R. Co.)
- Direct (Mr. Boles) 2045
- Cross (Mr. Machen) 2047
- Re-direct (Mr. Boles) 2048
- Re-cross (Mr. Machen) 2048
- Re-re-direct (Mr. Boles) 2050

Bertolet, Wellington M.: (L. V. R. R. Co.)
- Direct (Mr. Boles) 2000
- Cross (Mr. Machen) 2006
- Cross (Mr. Warren) 2013
- Re-direct (Mr. Boles) 2014
- Re-cross (Mr. Machen) 2015
- Re-re-direct (Mr. Boles) 2015
- Re-re-cross (Mr. Machen) 2016
- Re-re-re-direct (Mr. Boles) 2016
- Re-cross (Mr. Warren) 2017

Bingham, A. M.: (L. V. R. R. Co.)
- Direct (Mr. Boles) 1732
- Cross (Mr. Machen) 1735
- Re-direct (Mr. Boles) 1736

Blood, Clarence A.: (L. V. R. R. Co.)
- Direct (Mr. Boles) 1467
- Cross (Mr. Machen) 1470

Burton., Wm. J.: (L. V. Coal Sales Co.)
- Direct (Mr. Warren) 1737
- Cross (Mr. Machen) 1762
- Re-direct (Mr. Warren) 1767
- Exhibits: Lehigh Valley Coal Sales Co. Nos. 5 to 19, inc.
- Recalled:
  - Direct (Mr. Warren) 2040
  - Cross (Mr. Machen) 2042
  - Re-direct (Mr. Warren) 2044

Chase, Frederick M.: (L. V. Coal Co.)
- Direct (Mr. Wheaton) 1610
- Cross (Mr. Machen) 1620
- Re-direct (Mr. Wheaton) 1632
- Re-cross (Mr. Machen) 1633
- Re-re-direct (Mr. Wheaton) 1633

Defendants' Witnesses.—Continued.

Cochran, William A.: (L. V. Coal Co.)
Direct (Mr. Wheaton) 1664
Cross (Mr. Gordon) 1665
Cross (Mr. Machen) 1669
Cross (Mr. Gordon) 1669
Re-direct (Mr. Wheaton) 1669
Re-direct (Mr. Boles) 1670
Re-cross (Mr. Machen) 1673
Re-re-direct (Mr. Boles) 1675
Re-re-cross (Mr. Machen) 1675
Re-re-re-direct (Mr. Wheaton) 1676
Re-re-re-direct (Mr. Boles) 1676
Coyle, William R.: (L. V. R. R. Co.)
Direct (Mr. Boles) 2017
Cross (Mr. Warren) 2024
Cross (Mr. Machen) 2030
Exhibits: L. V. R. R. Co. No. 91.
Dousman, Robert S.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1300
Exhibits: L. V. R. R. Co. Nos. 57 to 61, inc.
Recalled:
Direct (Mr. Warren) 1306
Cross (Mr. Machen) 1309
Re-direct (Mr. Boles) 1313
Re-cross (Mr. Machen) 1315
Dunn, Homer A.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1156
Cross (Mr. Machen) 1166
Re-direct (Mr. Boles) 1175
Re-cross (Mr. Machen) 1175
Exhibits: L. V. R. R. Co., Nos. 32 and 33.
Evans, Wm. R.: (L. V. Coal Sales Co.)
Direct (Mr. Warren) 1831
Exhibits: L. V. Coal Sales Co. Nos. 39 and 40.
Recalled:
Direct (Mr. Warren) 1853
Exhibits: L. V. Coal Sales Co. Nos. 42 to 45, inc.
Recalled:
Direct (Mr. Warren) 1875
Cross (Mr. Machen) 1882
Re-direct (Mr. Warren) 1884
Re-cross (Mr. Machen) 1884
Re-re-direct (Mr. Warren) 1894
Exhibits: L. V. Coal Sales Co. Nos. 46 and 47.
Recalled:
Direct (Mr. Warren) 2038
Cross (Mr. Machen) 2038
Fahy, Walter J.: (L. V. Coal Co.)
Direct (Mr. Wheaton) 1607
Cross (Mr. Machen) 1608
Foster, George H.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1321
Cross (Mr. Machen) 1327
Exhibits: Lehigh Valley R. R. Nos. 1, 2, 3, 6, 66, 67 and 68.
Recalled:
Direct (Mr. Boles) 1860
Cross (Mr. Machen) 1862
Exhibits: Lehigh Valley R. R. No. 90.
Gildroy, Geo. J.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1413
Direct (Mr. Warren) 1414
Direct (Mr. Boles) 1417
Cross (Mr. Machen) 1421
Re-direct (Mr. Boles) 1426
Re-cross (Mr. Machen) 1427
Exhibits: Lehigh Valley R. R. Co. Nos. 75 and 76.

Defendants' Witnesses.—Continued.

Grier, Wm. T.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1444
Direct (Mr. Warren) 1448
Cross (Mr. Machen) 1449
Re-direct (Mr. Boles) 1453
Re-direct (Mr. Warren) 1455
Re-cross (Mr. Machen) 1457
Re-cross (Mr. Gordon) 1457
Re-re-direct (Mr. Warren) 1459
Re-re-cross (Mr. Gordon) 1460
Re-re-re-direct (Mr. Warren) 1463
Re-re-re-cross (Mr. Gordon) 1464
Re-re-re-re-direct (Mr. Warren) 1465
Exhibits: Lehigh Valley R. R. Co. Nos. 79 to 85, inc.; Government 130.
Recalled: (L. V. Coal Sales Co.)
Direct (Mr. Warren) 1955
Cross (Mr. Machen) 1958
Re-direct (Mr. Warren) 1962
Re-direct (Mr. Boles) 1962
Re-cross (Mr. Machen) 1963
Re-re-direct (Mr. Boles) 1963
Exhibits: L. V. Coal Sales Co. No. 48.
Recalled: (L. V. R. R. Co.)
Direct (Mr. Boles) 2052
Direct (Mr. Warren) 2057
Cross (Mr. Machen) 2058
Re-direct (Mr. Boles) 2060
Re-cross (Mr. Machen) 2060
Re-re-direct (Mr. Boles) 2061
Exhibits: L. V. R. R. Co., Nos. 92 and 93.
Hamilton, James S.: (L. V. Coal Sales Co.)
Direct (Mr. Warren) 1818
Cross (Mr. Machen) 1827
Re-direct (Mr. Warren) 1829
Re-cross (Mr. Machen) 1829
Heinzer, Harry: (L. V. R. R. Co.)
Direct (Mr. Boles) 1318
Hill, Robert C.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1944
Cross (Mr. Gordon) 1949
Re-direct (Mr. Boles) 1951
Re-cross (Mr. Gordon) 1952
Re-cross (Mr. Machen) 1955
Humphrey, John M.: (L. V. Coal Co.)
Direct (Mr. Wheaton) 1642
Cross (Mr. Machen) 1647
Re-direct (Mr Wheaton) 1661
Re-cross (Mr. Machen) 1662
Exhibits: L. V. Coal Co. Nos. 4, 5, 6, 7 and 8.
Jacobs, Chas. H.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1713
Direct (Mr. Warren) 1717
Cross (Mr. Machen) 1718
Re-direct (Mr. Warren) 1719
Re-direct (Mr. Boles) 1719
Jarvis, T. N.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1473
Cross (Mr. Machen) 1475

Defendants' Witnesses.—Continued.

Kishbaugh, Wilson: (L. V. R. R. Co.)
Direct (Mr. Boles) 2024
Cross (Mr. Machen) 2035
Cross (Mr. Warren) 2037
Large, R. H.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1720
Direct (Mr. Warren) 1726
Cross (Mr. Machen) 1727
Cross (Mr. Gordon) 1728
Cross (Mr. Machen) 1729
Re-direct (Mr. Boles) 1731
Re-cross (Mr. Machen) 1731
Markle, John: (L. V. Coal Co.)
Direct (Mr. Wheaton) 1590
Cross (Mr. Machen) 1593
Re-direct (Mr. Wheaton) 1600
Re-direct (Mr. Boles) 1601
Re-cross (Mr. Machen) 1604
Re-re-direct (Mr. Wheaton) 1606
McTurk, Wm. R.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1845
Cross (Mr. Machen) 1848
Re-direct (Mr. Boles) 1849
Re-cross (Mr. Machen) 1849
Miller, Geo.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1292
Direct (Mr. Warren) 1295
Cross (Mr. Machen) 1296, 1299
Exhibits: Gov. Ex. No. 129; L. V. R. R. Co. Nos. 52, 53, 54, 56.
Morrison, J. I.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1329
Cross (Mr. Machen) 1353
Cross (Mr. Gordon) 1383
Cross (Mr. Machen) 1385
Cross (Mr. Gordon) 1386
Cross (Mr. Machen) 1389
Re-direct (Mr. Boles) 1391
Re-cross (Mr. Machen) 1407
Exhibits: L. V. R. R. Co. Nos. 69 to 75, inc.
Norris, Robert Van Arsdale: (L. V. Coal Co.)
Direct (Mr. Wheaton) 1476
Direct (Mr. Warren) 1545
Cross (Mr. Gordon) 1547
Cross (Mr. Machen) 1564
Re-direct (Mr. Wheaton) 1565
Re-direct (Mr. Warren) 1570
Re-cross (Mr. Machen) 1571
Re-re-direct (Mr. Wheaton) 1573
Re-re-direct (Mr. Warren) 1573
Re-re-direct (Mr. Wheaton) 1578
Re-re-cross (Mr. Gordon and Mr. Machen) 1581
Re-re-direct (Mr. Wheaton) 1589
Testimony in Reading Case 1478
Porcher, John A.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1319
Exhibits: Lehigh Valley R. R. Co. Exs. Nos. 63 and 64.
Ross, Andrew: (L. V. R. R. Co.)
Direct (Mr. Boles) 1410
Cross (Mr. Machen) 1411
Re-direct (Mr. Boles) 1411
Re-cross (Mr. Machen) 1412
Re-re-direct (Mr. Boles) 1412
Re-re-cross (Mr. Machen) 1413

Defendants' Witnesses.—Continued.

Shea, Cornelius J.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1428
Direct (Mr. Warren) 1432
Cross (Mr. Machen) 1436
Re-direct (Mr. Boles) 1441
Re-cross (Mr. Machen) 1442
Re-direct (Mr. Warren) 1443
Re-re-cross (Mr. Machen) 1444
Exhibits: L. V. R. R. Co. Exs. 54 and 78.
Smith, L. D.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1236
Direct (Mr. Warren) 1242
Cross (Mr. Machen) 1272
Re-direct (Mr. Warren) 1284
Re-direct (Mr. Boles) 1289
Re-cross (Mr. Machen) 1289
Stem, Leo. A.: (L. V. Coal Sales Co.)
Direct (Mr. Warren) 1797
Cross (Mr. Machen) 1809
Re-direct (Mr. Warren) 1814
Re-cross (Mr. Machen) 1815
Re-re-direct (Mr. Warren) 1816
Re-re-cross (Mr. Machen) 1816
Re-re-re-direct (Mr. Warren) 1817
Re-re-re-cross (Mr. Machen) 1817
Recalled:
Direct (Mr. Warren) 1850
Cross (Mr. Machen) 1851
Re-direct (Mr. Warren) 1852
Re-cross (Mr. Machen) 1853
Exhibits: L. V. Coal Sales Co. No. 41.
Recalled:
Direct (Mr. Warren) 1872
Cross (Mr. Machen) 1873
Re-direct (Mr. Warren) 1874
Summers, William L.: (L. V. Coal Sales Co.)
Direct (Mr. Warren) 1767
Cross (Mr. Gordon) 1786
Re-direct (Mr. Warren) 1790
Re-cross (Mr. Machen) 1790
Re-re-direct (Mr. Warren) 1790
Re-re-cross (Mr. Gordon) 1791
Re-re-re-direct (Mr. Warren) 1793
Re-re-re-cross (Mr. Gordon) 1795
Exhibits: L. V. Coal Sales Co. Nos. 20 to 36, inc.
Recalled:
Direct (Mr. Warren) 1995
Cross (Mr. Machen) 1999
Exhibits: L. V. Coal Sales Co. Exs. Nos. 49 to 53, inc.
Recalled:
Direct (Mr. Warren) 2039
Cross (Mr. Machen) 2039
Re-direct (Mr. Warren) 2040
Exhibits: L. V. Coal Sales Co. 54.
Thompson, George A.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1320
Cross (Mr. Machen) 1321
Exhibit: L. V. R. R. Co. No. 65.
Thompson, Mark E.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1176
Cross (Mr. Machen) 1177
Exhibit: L. V. R. R. Co. 34.

Defendants' Witnesses.—Continued.

Thorne, S. B.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1865
Cross (Mr. Machen) 1869
Re-direct (Mr. Warren) 1872
Re-direct (Mr. Boles) 1872
Tompkins, L. A. (L. V. R. R. Co.)
Direct (Mr. Boles) 1306
Exhibit: L. V. R. R. Co. Ex. 62.
Re-called: (L. V. Coal Co.)
Direct (Mr. Wheaton) 1677, 1694
Direct (Mr. Boles) 1686
Direct (Mr. Warren) 1691, 1695
Cross (Mr. Gordon) 1695
Cross (Mr. Machen) 1704
Re-direct (Mr. Wheaton) 1708
Re-cross (Mr. Machen) 1711
Re-re-direct (Mr. Boles) 1712
Exhibits: L. V. Coal Co. Exs. Nos. 9 and 10; L. V. R. R. Co. Ex. No. 89.
Recalled: (L. V. Coal Sales Co.)
Direct (Mr. Warren) [In Government Testimony, Vol. 1]. 581
Urch, Alfred: (L. V. Coal Sales Co.)
Direct (Mr. Warren) 1817
Exhibit: L. V. Coal Sales Co. No. 37.
White, Robert I.: (L. V. Coal Sales Co.)
Direct (Mr. Warren) 1898
Cross (Mr. Machen) 1898
Re-direct (Mr. Warren) 1901
Wilgus, William J.: (L. V. R. R. Co.)
Direct (Mr. Boles) 1177
Direct (Mr. Warren) 1209
Cross (Mr. Machen) 1212
Re-direct (Mr. Warren) 1224
Re-direct (Mr. Boles) 1225
Re-cross (Mr. Machen) 1229
Re-re-direct (Mr. Boles) 1232
Re-re-cross (Mr. Machen) 1234
Re-re-re-direct (Mr. Boles) 1234
Re-re-re-cross (Mr. Machen) 1235
Exhibits: L. V. Coal Sales Co. No. 3; L. V. R. R. Co. Nos. 35-51, inc.
Recalled:
Direct (Mr. Boles) 1327
Cross (Mr. Machen) 1633
Re-direct (Mr. Boles) 1641
Re-cross (Mr. Machen) 1642
Wilson, George N.: (L. V. Coal Sales Co.)
Direct (Mr. Warren) 1901
Recalled:
Direct (Mr. Warren) 1963
Cross (Mr. Machen) 1964
Re-direct (Mr. Warren) 1979
Re-cross (Mr. Machen) 1985
Re-re-direct (Mr. Warren) 1987
Recalled:
Direct (Mr. Warren) 2050
Cross (Mr Machen) 2051
Re-direct (Mr. Warren) 2051

Extracts from Testimony in United States v. Reading.

Norris, Robert Van Arsdale (Vol. IV, Reading Record, pp. 386-438) 1478

EXHIBITS.

Girard Trust Co.

	Page offered.	Page printed.
1. *Copy of General Consolidated Mortgage of L. V. R. R. to Girard Trust Co., Sept. 30, 1903	1140	
2. *Copy of Collateral Trust Agreement between L. V. R. R. and Girard Trust Co., as Trustee, Nov. 1, 1905	1140	

Lehigh Valley Coal Co.

No. 1. Charter of Luzerne Coal & Iron Co. (Pamphlet Laws of Pennsylvania, 1868, pp. 828, 829, 830, approved April 11, 1868)	1475	2644
No. 2. Charter of Green Land Co., May 29, 1871 (Pamphlet Laws of Pa., 1872, pp. 1351-52)	1475	2647
No. 3. Supplement to charter of Green Land Co., April 2, 1872 (Pamphlet Laws, Pa., 1872, p. 727)	1476	2649
No. 4. Map showing area of the coal properties of the N. Y. & Middle Coal Field R. R. & Coal Co.	1644	2650
No. 5. Map showing area of coal properties of Coxe Bros. & Co., Inc.	1644	2651
No. 6. Map showing area of coal properties of L. V. Coal Company	1644	2652
No. 7. Blueprint showing total lands of L. V. Coal Co., lying along lines of L. V. R. R. and percentage of such coal lands held by L. V. Coal Co. to all anthracite coal lands which lie adjacent to L. V. R. R., etc.	1646	2653
No. 8. Blue print showing total anthracite acreage and total acreage for L. V. Coal Co., Coxe Bros. & Co., and N. Y. & M. C. F. & R. R. & C. Co. and anthracite acreage naturally and conveniently tributary to L. V. R. R.	1646	2654
No. 9. Production of Coxe Bros. & Co., Inc., from 1905 to 1913, inc.	1684	2655
No. 10. Results of coal purchased under 65 per cent. contracts	1711	2656

Lehigh Valley Coal Sales Co.

No. 1. Extract from minutes of L. V. R. R. Co., having to do with a certain increase of capital stock of L. V. R. R. about the latter part of June, 1910, containing statement as to issuance of fractional share receipts. (Marked for identification, 54)	1299	2445
No. 2. Cover of booklet containing L. V. R. R. list of offices, agents, stations, etc. Nov. 1, 1910. (Marked for identification, 260)	1299	2448
No. 3. Tabulation showing location and appraisal of coal handling properties of L. V. R. R. and L. V. Coal Co.	1210	2449
No. 4. Cover of Time Table of L. V. R. R. in use at present	1299	2450
No. 5. Certified copy of certificate of incorporation of the L. V. Coal Sales Co., certified under the hand of S. D. Dickinson, Secy. of State, N. J., Jan. 22, 1912	1737	2451
No. 6. Copy of minutes of first meeting of incorporators, Feb. 16, 1912	1737	2458
No. 7. Copy of minutes of first meeting Board of Directors, Feb. 16, 1912	1737	2460
No. 8. Transcript from records of Meeting, Board of Directors, Feb. 27, 1912	1737	2464
No. 9. Transcript of meeting, Board of Directors, February 28, 1912	1737	2465

---

*To be found accompanying Separate Answer of Girard Trust Co.

Exhibits—Lehigh Valley Coal Sales Co.

	Page offered.	Page printed.
No. 10. Copy of application blank for industrial corporations addressed to the N. Y. Curb Market Assn., 25 Broad St., N. Y., together with copy of letter from Secy. of that Assn. to L. V. Coal Sales Co.	1741	2468
No. 11. Daily Quotation Sheet, N. Y. Curb Market Assn., Thursday, July 9, 1914	1741	2472
No. 12. Transcript of meeting, Board of Directors, March 22, 1912	1742	2478
No. 13. List of stockholders of L. V. Coal Sales Co. headed "Classification of stock owned other than by individuals or fiduciaries, July 9, 1914"	1744	2480
No. 14. "L. V. Coal Sales Co., sundry large stockholders as of June 20, 1914"	1745	2486
No. 15. Comparative statement showing difference in account of sundry stockholders held approximately on April 22, 1914	1746	2487
No. 16. L. V. Coal Sales Co., notice to stockholders Nov. 17, 1913, in re subscription to stock, etc.	1750	2489
No. 17. Circulars issued by Chas. H. Jones & Co., Investment Bankers, 20 Broad St., Nov. 15, 1913, in re circular to L. V. Coal Sales stockholders	1752	2491
No. 18. Comparisons as of March 28, 1914, on part of L. V. R. R. stock, with stock holding list of the L. V. Coal Sales Co., as of April 9, 1914	1753	2493
No. 19. Memo. showing changes in stockholders' list between Oct. 10, 1912, and July 9, 1914	1754	2494
No. 20. Memorandum: "Accounts purchased from L. V. Coal Co."	1768	2495
No. 21. Statement showing percentage of Railroad's shipments to various points to total shipments; tonnage of Sales Co.'s shipments and per cent. of their shipments, Nov., 1912	1771	2497
No. 22. Collieries along lines of L. V. R. R. and tons shipped over different Railroads including L. V. R. R. (none of which tonnage was purchased or handled by L. V. Coal Sales Co.).	1772	2498
No. 23. Estimated profit on sales of G. B. Markle Co.'s coal.	1776	2499
No. 24. Demurrage paid L. V. R. R. Co., March 1, 1912-March 31, 1914	1776	2500
No. 25. List of tonnage sold to parties leasing yards and trestles from L. V. Coal Sales Co., showing total tonnage sold from March 1, 1912-March 31, 1914	1779	2501
No. 26. Tonnage purchased from collieries located on L. V. R. R. Co., not owned by L. V. Coal Co. or Coxe Bros., some of which is sold by Sales Co. on commission or purchased under short time agreement for 1912	1779	2502
No. 27. Expenditures made by L. V. Coal Sales Co. on certain storage plants on line of L. V. R. R., covering rents, taxes and maintenance and totals—1913	1779	2502
No. 28. Analysis of gross sales calendar year 1913	1782	2503
No. 29. Analysis of gross sales, 10 months ending December 31, 1912	1782	2503
No 30. Cost of handling per ton at 4 storage plants	1782	2503
No. 31. Analysis of gross sales, year ending March 31, 1914.	1783	2504
No. 32. Statement in detail of coal in stock and in transit, purchased from L. V. Coal Co. (March 1, 1912), and amounts paid therefor	1783	2504
No. 33. Statement in detail covering the amount of rent at certain storage plants, taxes, maintenance and insurance, and total of the insurance carried on those plants under contract, March 1 to Dec. 31, 1912	1784	2505

Exhibits—Lehigh Valley Coal Sales Co.

	Page offered.	Page printed.
No. 34. Statement of certain storage plants similar to No. 33, calendar year 1913	1784	2506
No. 35. Statement similar to Ex. 34 on same storage plants for 10 mos. of 1912, that L. V. Coal Sales Co. was in business	1784	2507
No 36. Statement of coal purchased from certain companies other than L. V. Coal Co., July 1, 1912, to June 30, 1913.	1784	2508
No. 37. Statement of quantity of anthracite sold in N. Y. and Brooklyn for year from April 1, 1913-March 31, 1914..	1818	2509
No. 38. List of stockholders of L. V. Coal Sales Co., April 9, 1914, who were not stockholders of L. V. R. R. Co. on March 28, 1914	1830	2510
No. 39. Notice sent to coal trade acquainting them with business of L. V. Coal Sales Co.	1832	2524
No. 40. List of present executive officers of Sales Co. and various agencies, their location and names of agents....	1832	2524
No. 41. Letter dated July 13, 1914, from H. M. Speece.....	1850	2525
No. 42. Schedule of persons named in Government's petition, pp. 52-55, location of premises and from information from sales agents the dealings, if any, with such persons so listed	1853	2526
No. 43. List of contracts now in force that L. V. Coal Sales Co. has entered into for sale of coal to different concerns at different places "Lines Sales Office".....	1859	2532
No. 44. "New York office, July 24, 1914, Contract for broken Coal." "Contract for pea coal." "Contract for buckwheat coal." "Contract for rice coal." "Contract for barley coal." "Contract, J. C. office for certain sizes"...	1859	2535
No. 45. Similar lists prepared by Chicago, Philadelphia, Buffalo and Syracuse offices	1860	2540
No. 46. Front page of "The Coal Trade Journal," June 17, 1914, showing advertisement of L. V. Coal Sales Co....	1878	2192
No. 47. Sheet showing devices of L. V. Coal Sales Co....	1882	
No. 48. Tariff I. C. C. D-664—Switching from other Railroads to points on L. V. R. R.	1957	2193
No. 49. Statement showing storage plants named in Wilgus valuation (Coal Sales Co. 3), giving Wilgus valuation, aggregate value of all plants appraised by Mr. Wilgus; amounts paid for rents, taxes, maintenance and insurance upon each plant; and rate of interest on valuation which those sums amounted to	1996	2255
No. 50. Statement of receipts and expenditures for March and April, 1912	199(	2278
No. 51. Statement of repairs and renewals at So. Plainfield plant from March 1, 1912-Dec. 31, 1912.....	1996	
No. 52. Statement of amounts of moneys for insurance that Sales Co. has expended from March, 1912, to July, 1912, and from Aug., 1912, to July 31, 1913.....	199	2279
No. 53. Statement of gross amount of business for 13 mos. ending March 31, 1913, and statement of all earnings distributed to stockholders by way of dividends; date of payments and amounts and rate per cent. of dividends..	1	2285 2286 2287 2288
No. 54. Exact rate of rental by way of percentage upon Wilgus valuation at the plants	2	2289
No. 55. Pleadings in U. S. v. D. L. & W. R. R. and D. L. & W. Coal Co. and opinion of Circuit Court of U. S. and U. S. District Court, District of N. J.....		2290 2291 2292

Exhibits—Lehigh Valley Railroad Co.

	Page offered.	Page printed.
No. 1. Statement showing the amount of tonnage stipulated for in the Wertheim Coal & Coke Co. lease, and amount they have actually shipped year by year since 1906 (Marked for identification, 122)	1324	2063
No. 2. Statement showing leases in existence at various points which originally contained shipping clauses. (Marked for identification, 138)	1325	2064
No. 3. Statement showing comparative square foot rentals of land for the various leases which are named in the Government's petition, etc. (Marked for identification, 138)	1325	2073
No. 4. Production of coal in 1912, prepared by *E. W. Parker*, U. S. Geological Survey. (Marked for identification, 277)	1472	2077
No. 5. Tonnage via all lines to N. Y. Harbor with the proportion of both in tons and percentage shipped by L. V. Coal Sales Co. (Marked for identification, 277)	1331	2110
No. 6. Letter from *Eugene W. Leake* in re Wertheim lease. (Marked for identification, 282)	1336	2110
No. 7. Sec. 2, Act of Apr. 7, 1830, Commonwealth of Pa., pamphlet laws, 292; Sec. 1, Act of March 20, 1849, pamphlet laws, 166; Sec. 2, Act of Apr. 15, 1857, pamphlet laws, 159—(Charter of Beaver Meadow R. R. Co.)	1113	2111
No. 8. Act of March 16, 1826; Sec. 8, Act of March 20, 1849; Sec. 1, Act of March 8, 1839; Sec. 1 and 2, Act of April 5, 1849; Sec. 1, Act of March 16, 1853; Sec. 1, Act of Jan. 12, 1856; Sec. 1, Act of March 9, 1865; Sec. 2, Act of March 9, 1865, (Harleton Coal Co.)	1115	2114
No. 9. Copy Sec. 14, Act April 21, 1846. (Incorporating D. L. S. & S. R. R.)	1114	2121
No. 10. Copy Sec. 1, Act Jan. 7, 1853, changing name D. L. S. S. to L. V. R. R.	1114	2122
1. Copy, Sec. 1, Act March 8, 1856. (Connection L. V. R. with Beaver Meadow R. R. Co.)	1115	2123
Secs. 1, 2 and 3, Act March 23, 1854; Sec. 1, Act rch 16, 1855; Sec. 2, Act Feb. 12, 1858; Sec. 1, Act il 8, 1857; Sec. 1, Act April 16, 1858. (Re corporate ts of Lehigh & Luzerne R. R.)	1116	2123
Act April 25, 1857—Secs. 1 and 4. (Quakake R. R.)	1116	2126
Sec. 1, Act May 4, 1857; Sec. 3, Act April 11, 1859; 2, Act April 2, 1860. (Penn Haven and White Haven R. Co.)	1117	2127
Copy Articles of Association, D. S. & S. R. R.	1123	2128
Corporation Chart, L. V. R. R. Co. and associated s, April 16, 1909, and revised to April 7, 1914	1124	2132
Statement "L. V. R. R. System, statement of mileage 30, 1913," showing 1st track miles; 2nd, 3rd, and rack miles, yard tracks and sidings and totals	1124	2133
tatement: "Extracts from Annual Report of of Directors, L. V. R. R. to its stockholders, year and from like reports for various years to 1906"	1124	2135
py Sec. 90, Act of Pa., May, 1857—permitting L. R. to construct coal pockets at point where Rail- crosses Del. Division of Pa. Canal	1125	2165
opy Sec. 1, 2 and 3 of Acts of Pa. of May 16, —permitting a Railroad to merge itself into any Railroad Company. See L. V. Ex. No. 21	1125	2166

Exhibits—Lehigh Valley Railroad Co.

	Page offered	Page printed
No. 21. Copy Sec. 1, Act March 24, 1868, of Pa. See L. V. Ex. No. 20 and Sec. 1, Act of Apr. 26, 1870	1125	2168
No. 22. Copy Sec. 1, Act March 31, 1868, permitting companies to invest earnings, etc., in mortgages, securities, etc. Sec. L. V. Exs. No. 23 and 96	1125	2170
No. 23. Sec. 1, Act March 17, 1869, Pa., making it lawful for a Railroad to purchase and hold stocks and bonds or guarantee the payment of bonds of other Railroads existing under laws of Pa. See L. V. Exs. No. 22 and 96	1125	2171
No. 24. Copy Sec. 1, Act April 15, 1869, Pa., making it lawful for Railroads and Canal Companies to develop coal, etc., interests of Pa. by purchase of their capital stock, etc. See L. V. Exs. No. 25 and No. 96	1126	2171
No. 25. Copy of Sec. 7, Act March 15, 1872, Pa., incorporating Delano Land Co. and exempting bonds and stocks of from proviso of Act of April 15, 1869. See L. V. Exs. No. 24 and No. 96	1126	2171
No. 26. Mortgage of May 1, 1897, with Girard Life Ins. Annuity & Trust Co. of Phila. (now known as Girard Trust Co.). Secs. 7, 18 and 19	1126	2172
No. 27. Copy of agreement May 31, 1890, between L. V. R. R. and American Improved Cements Co. and supplementary thereto an agreement Jan. 3, 1893, between L. V. R. R., P. & Ky. as lessee and American Cement Co.	1128	2181
No. 28. Memoranda of agreement Dec. 17, 1863, between Franklin Coal Co. and Parrish & Conyngham	1129	2187
No. 29. Copy memo. of agreement May 22, 1884, between L. V. R. R. and John J. Detwiller, *et al*	1129	2189
No. 30. Copy of agreement Dec. 1, 1876, between L. V. R. R. and Geo. B. Markle & Co.	1129	2191
No. 31. Power of attorney to stockholders of R. R. in re extra dividend of 10 per cent. See Gov. Ex. 25, pp. 42, 629, for circular letter of Jan. 19, 1912	1130	2192
No. 32. Report Feb. 26, 1914, on historical synopsis of L. V. R. R. Co.'s System to June 30, 1913	1152	2193
No. 33. Report March 16, 1914, on special examination of property accounts from 1830 to June 30, 1913, and of income account Dec. 1, 1893-June 30, 1913, of various companies embraced in L. V. R. R. Co.'s transportation system	1160	2255
No. 34. Map showing various Railroad lines from anthracite coal region in Pennsylvania and covering the territory west from N. Y. Harbor and Hudson River to Buffalo and Pittsburgh, etc.	1177	2278
No. 35. "Copies of pages 14, 15, 16 and 17, report on Valuation of L. V. R. R. as of Jan. 16, 1914, by W. J. Wilgus," containing final summary of valuation	1180	2279
No. 36. Pamphlet "Abstract of Report on Appraisal of L. V. R. R. Co., rearranged from the Engineering Record of May 16 and May 30, 1914"	1181	2285
No. 37. Diagram One, Growth of Mileage	1181	2286
No. 38. Diagram 2, Capital Obligations	1183	2287
No. 39. Diagram 3, Tonnages	1189	2288
No. 40. Diagram 4, Tonnages and Average Revenues per mile	1191	2289
No. 41. L. V. R. R. System. Financial Results, 1857-1913	1192	2290
No. 42. Diagram 5, Financial Results	1192	2291
No. 43. L. V. R. R. System, Average Capital Obligations Issued and Assumed and Rates of Return, 1856-1913, inc.	1171	2293

Exhibits—Lehigh Valley Railroad Co.

	Page Offered	Page Printed
No. 44. Diagram 6, Rates of Return on Funded and Unfunded Capital Obligations	1193	2293
No. 45. Diagram 7, Rates of Return on Total Capital Obligations	1194	2294
No. 46. Statement "L. V. R. R. System, Comparison of Actual and Minimum Fair Returns, 1856-1913, inc."	1197	2296
No. 47. Diagram 8, Capital Obligations and Returns Above and Below Minimum Fair Percentage	1197	2296
No. 48. L. V. R. R. Consolidated General Balance Sheet, Average Fiscal Year 1913, Based on Appraisal of Road and Equipment	1198	2297
No. 49 "L. V. R. R. System, Investments in Bonds and Stocks of and Advances to Companies Outside of the Transportation System"	1199	2298
No. 50. L. V. R. R. System, Miscellaneous Data	1199	2299
No. 51. L. V. R. R. System, Rates Received for Anthracite Coal, other Freight and Passengers	1200	2300
No. 52. Statement showing total production and shipment of anthracite from collieries tributary to L. V. R. R., year ending June 30, 1913, parties to whom sold at mines, etc., amount production purchased by L. V. Coal Sales Co., tonnage used at colliery, tonnage sold at colliery or breaker to public, tonnage shipped via L. V. as originating carrier, tonnage shipped via other lines as originating carrier from each colliery, and name of carrier, total shipment from each colliery, and how much was L. V. supply and how much revenue	1293	2301
No. 53. Statement showing distribution of anthracite transferred from the collieries on the line of L. V. R. R. to various connecting lines and amount gross tons delivered to various connecting rail and water lines	1294	2305
No. 54. Chart showing anthracite collieries in operation during 1913, their location, tonnage, track connections, etc.	1444	2305
No. 55. Statement showing high and low price of stock of L. V. R. R. Co., years 1863-1912	1296	2307
No. 56. Statements showing the shipments of anthracite coal over various coal-carrying Railroads named thereon, years 1896-1913, inc.	1299	2308
No. 57. Statement showing for fiscal years 1855-1913, tons of anthracite, and revenue thereon, transported by L. V. R. R. for each year, and inclusive, from year 1872-1913, bituminous coal and revenue because during most of the time the revenue was not kept separate	1300	2309
No. 58. List of leases of trestles showing dates of lease and dates vacated	1301	2311
No. 59. L. V. R. R. revenue per ton per mile on merchandise and coal separately from Hazleton, Pa., and Wilkes-Barre, Pa., for various points, fiscal year ending June 30	1302	2312
No. 60. Statement of gross tons anthracite—other freight—all freight—(revenue freight only), transported over L. V. R. R. Co.—1894-1913, both inc.	1304	2313
No. 61. L. V. R. R. Co., subdivision of anthracite reported as produced by L. V. Coal Co. and Coxe Bros. & Co., Inc., transported to local points on L. V. R. R. and to connections and to water reshipment points for a series of years—1900-1913	1306	2314

Exhibits—Lehigh Valley Railroad Co.

	Page Offered.	Page Printed
No. 62. Total production, Pa. (gross tons), of anthracite, including fuel consumed during calendar years 1900-1913, both inclusive; L. V. Coal Co.'s and Coxe Bros.' total production on same basis, cost price, total production on same basis; combined production, also showing fuel consumed at the mine (estimated), by the two companies and the combined statement	1306	2315
No. 63. Statement July 10, 1913, showing sugar shipments from N. Y. City and Philadelphia to and beyond the western termini of the Trunk Lines by various Railroads in Trunk Line Territory and divided by various Railroads as there shown (Jan. 1 to June 22, 1913	1320	2316
No. 64. Same as 62 for Jan. 1 to June 30, 1914	1320	2317
No. 65. Statement showing tons of freight traffic during year ending June 30th, 1912, handled via the different Railroads in Trunk Line territory and divided as to different classes of freight in accordance with I. C. C. classification	1321	2318
No. 66. Letter to Eugene W. Leake, July 2, 1914	1325	2320
No. 67. Certified copy of Charge of Court in Yates-Lehigh Co. Case	1326	2321
No. 68. Certified copy of docket entries in Yates-Lehigh Case	1327	2323
No. 69. Statement: L. V. R. R. Co.'s statement of securities of coal companies held in the possession or now owned by L. V. R. R.	1330	2324
No. 70. Letter of John W. Platten, 2d V. P., June 30, 1905, to W. C. Alderson, Treas., re certificates of indebtedness	1324	2325
No. 71. Statement: "L. V. R. R. Co. advances to other companies from 1894-1902, inclusive"	1324	2326
No. 72. Statement: "The L. V. R. R. Co. Summary of Stocks and Bonds of Coal Cos. and Water Cos. owned at the close of each year and returns received thereon during each year"	1335	2327
No. 73. Statement of property investments and income accounts and sundry statistics, years ending June 30, 1904-1913, inc., and 11 months to May 31, 1914	1335	2328
No. 74. Statement: L. V. Railroad's statement re purchase of capital stock of Coxe Bros. & Co., Inc., and D. S. & S. R. R. Co., showing amount of investment, cash outlay, cash received and excess of cash received over cash outlay to June 30, 1913, etc.	1336	2340
No. 75. Map entitled "L. V. R. R., M. & H. Div., Map showing D. S. & S. R. R. Office of Div. Engr., Hazleton, Pa., July 15, 1914." (Marked for identification, 1340)	1413	2343
No. 76. Statement of mileage of M. & H. Div. at present time and when tracks are lifted account of mines being exhausted	1414	2349
No. 77. This number was missed by stenographer.		
No. 78. Wyoming Div.—Statement showing trackage which we now have laid and in use which will be ultimately useless on account of exhaustion of the mines	1431	2352
No. 79. History of L. V. R. R. Co.'s anthracite coal rates, dated Oct. 23, 1913, for use in I. C. C. Docket 4914	1444	2353
No. 80. L. V. R. R., I. C. C. Tariff D-338, L. V. R. R., I. C. C. Tariff D-339, L. V. R. R., I. C. C. Tariff D-662	1444	2369

Exhibits—Lehigh Valley Railroad Co.

	Page Offered.	Page Printed
No. 81. List of local anthracite coal tariffs issued by L. V. R. R. and now in effect making rates from collieries, washeries, etc., in Lehigh, Schuylkill and Wyoming Regions on L. V. R. R. showing I. C. C. No. of each tariff, effective date and point to which applicable.....	1445	2373
No. 82. List of joint anthracite coal tariffs issued by L. V. R. R. and now in effect, making rates from collieries, washeries and stations in L. V. and Wyo. Regions, etc...	1445	2374
No. 83. List of general anthracite coal tariffs issued by other roads making rates from points on the L. V. R. R. to points on connecting lines, etc.	1445	2377
No. 84. List of joint anthracite coal tariffs issued by L. V. R. R. and now in effect making rates from collieries and stations in the Bernice Region, etc.....	1446	2378
No. 85. List of local anthracite coal tariffs issued by L. V. R. R. and now in effect, making rates from collieries and stations in Bernice Region.....	1446	2379
No. 86. Extract from meeting, Board of Directors L. V. R. R. Co., held at general office of Co., 228 So. 3rd St., Phila., Aug. 24, 1905.....	1471	2380
No. 87. Pp. 1304-1319 of the Record in the New Reading Case (general statement as to the legislative policy of the Commonwealth of Pa. in re relations between R. R. corporations of Pa. and coal mining corporations.....	1472	2382
No. 88. Senate Doc. 40, Vol. 7, 1910-1911. Investigation of Interior Dept. and Forestry Bureau (testimony of Geo. O. Smith, Director U. S. Geological Survey, before Senate in re Alaskan Soft Coal Lands). pp. 3478-3479; 3482-3485; 3488-3492	1472	2396
No. 89. Statement showing items embraced by certificates of indebtedness received by L. V. R. R. Co. from L. V. Coal Co., June 30, 1905.....	1687	2413
No. 90. Comparative Statement of Rentals of certain Coal Trestles under L. V. and P. R. R. plans.....	1861	2414
No. 91. Petition filed by G. B. Markle, Pardee Bros. & Co., Inc., and Weston, Dodson & Co., Inc. *v.* L. V. R. R. before I. C. C., Docket 5917, filed March 2, 1913.....	2024	2415
No. 92. Answer of L. V. R. R. to complaint of G. B. Markle & Co., Pardee Bros. & Co., Inc., and Weston, Dodson & Co., Inc., I. C. C. Docket 5917.....	2052	2423
No. 93. L. V. R. R. Tariff Supplement No. 3 to Tariff I. C. C. D. 509—effective June 1, 1913.....	2052	2425
No. 94. Opinion of Circuit Court for Eastern Dist. Pa., in I. C. C. *v.* L. V. R. R. reported in 74 Fed., 784—dismissing petition of I. C. C. in application to enforce its order in case of Coxe Bros. & Co. *v.* L. V. reported in 4 I. C. C.	2061	2428
No. 95. Agreement made Nov. 25, 1867, between C. R. R. of N. J., L. V. R. R. and A. Pardee & Co., representing Hazleton R. R. Co.	2061	4235
No. 96. Minutes of annual meeting of stockholders of L. V. R. R., held Jan. 21, 1873—See L. V. Exs. 22, 23, 24, 25.	2062	2437
No. 97. Extract from minutes of stated meeting of Board of Directors of L. V. R. R., April 14, 1896, Beaver Meadow Lands. Organization of Hazleton Coal Co.....	2062	2441
No. 98. Extract from minutes meeting Board of Directors, L. V. R. R., Thursday, Nov. 14, 1865, and extract meeting of Board of Directors, Nov. 13, 1866, and extract minutes meeting Board of Directors, Dec. 11, 1866—Beaver Meadow Lands and agreement with Warriour Run Mining Co.	2062	2442

GENERAL INDEX.

Agreements, Contracts, Leases, Etc.
American Improved Cements Co., L. V. R. R. Co., and Phila. & Reading, May 31, 1888, and Jan. 3, 1893—L. V. R. R. Co. Ex. No. 27 ..... 1128, 2181
Austin Coal Co. and L. V. R. R. Co., Feb. 23, 1891..... 1617 1625
Babylon Coal Co. and L. V. Coal Co., Jan. 1, 1890..... 1617, 1624
Buck Mountain Coal Company and Delano Land Co., Nov. 1, 1883 1629
Coal Ridge Improvement & Coal Co., N. Y. & M. C. F. R. R. & C. Co. and Packer Coal Co. to Midvalley Coal Co..... 1138
Central Railroad Co. of New Jersey, L. V. R. R. Co. and A. Pardee & Co., representing Hazleton Railroad Co., Nov. 25, 1867,—L. V. R. R. Ex. 95..... 2061, 2435
Connell, William, Lease to from Coal Co., Aug. 18, 1889..... 1625
Coxe, A. B. and L. V. R. R. Co., Oct. 7, 1905,—Sale of capital stock of Coxe Bros. & Co., Inc., D. S. & S. R. R. Co., Drifton Water Company, Beaver Meadow Water Co., Tomhicken Water Co., and Oneida Water Co..... 1365
Coxe Bros. & Co., Inc., and L. V. Coal Sales Co., March 1, 1912,—Coal purchase contract 1919
Dalton, Thos. W., and L. V. Coal Co., April 27, 1910..... 1877
Detwiller, John J., and L. V. R. R. Co., May 23, 1884,—Construction of siding to boiler plant near Slatington, Pa.,—L. V. R. R. Co. Ex. No. 29..... 1129, 2189
Delano Land Co. and Lentz, Lilley & Co., Jan. 1, 1884..... 1629
Erie R. R. Co. and L. V. R. R. Co.,—Trackage arrangement near Buffalo 1122
Franklin Coal Co. and Parrish & Conyngham, Dec. 7, 1863,—L. V. R. R. Co. Ex. No. 28..... 1129, 2186
Greenville Coal & Ice Co., Lease to, at Jersey City..... 1321
Healy, Martin J., Lease from L. V. Coal Co., Jan. 1, 1910..1618, 1627
L. V. Coal Co. and Phila. & Reading Coal & Iron Co., Dec. 1, 1901 1647
L. V. Coal Co. and L. V. Coal Sales Co., Mar. 1, 1912,— 1290, 1694, 1916
Markle & Co., G. B. and L. V. R. R., Dec. 1, 1876,—L. V. R. R. Co. Ex. No. 30..... 1129, 2191
Markle & Co., G. B. and L. V. R. R. Co., Dec. 30, 1889..... 1842
Riley, Louis A., & Co., and Locust Mountain Coal and Iron Co., Jan. 7, 1889..... 1623

Attorney General of U. S.—Report of, 1912—Section re Commodity Clause Cases, concerning organization of Lehigh Valley Coal Sales Co., read into evidence..... 1267

Annual Reports.
Extracts from, 1855-1906—Development of L. V. R. R. System, L. V. R. R. Co. Ex. 18..... 1124, 2135
Extracts from—Directors, L. V. R. R. Co., year ending June 30, 1912, as to organization L. V. Coal Sales Co 1829

Beaver Meadow Railroad & Coal Co.
Act of Apr. 7, 1830, incorporating, L. V. R. R. Co. Ex. No. 7 ..... 1113, 2111
Act of Mar. 8, 1856, merging into L. V. R. R. Co., L. V. R. R. Co. Ex. No. 11 ..... 1115, 2122
Lands acquired by L. V. R. R. Co. in merger with..... 1112
Lands acquired by L. V. R. R. Co. in merger with, leased to Cross Creek Coal Co., and mined by that Co..... 1136

General Index.—Continued.

Coxe Bros. & Co., Inc.
Capital stock—purchase upon offer by A. B. Coxe..... 1289
Contract of Oct. 7, 1905 1365
Amount of investment, cash outlay, etc.....1336,1366, 1407, 2340
Facts concerning 1236
Coal produced by. L. V. R. R. Co. Ex. No. 61.....1305, 2314
not now purchased by L. V. Coal Co..... 1612
and L. V. Coal Co. coal—distinction between..... 1621
date when L. V. Coal Co. began to sell..... 1694
purchased by L. V. Coal Sales Co. from, since June 1, 1913. 1774
Complaint of—I. C. C. *v.* L. V. R. R. Co.—Opinion of Circuit Court. Eastern District of Pa., May 11, 1896, 74 Fed., 784—L. V. R. R. Co. Ex. 94 .....2061, 2428
Contract with L. V. Coal Sales Co. temporary arrangement from month to month 1919
Cross Creek Coal Co. name changed to..... 1136
Lands acquired by L. V. R. R. Co. and Beaver Meadow R. R. merger leased to and mined by 1136
Map showing coal properties of—L. V. Coal Co. Ex. No. 5. 1643, 1644, 2651
Stockholders at time of acquisition by L. V. R. R. Co..... 1126
Central Railroad Company of New Jersey.
Agreement of Nov. 25, 1867, with L. V. R. R. Co. and Hazleton R. R. Co. L. V. R. R. Co. Ex No. 95.....2061, 2435
Consolidated Read Estate Co.
Included in Financial History 1159
Cross Creek Coal Co.
Beaver Meadow Lands leased to, prior to purchase of Coxe Bros. & Co. stock 1147
Name changed to Coxe Bros. & Co., Inc..... 1136
Certificates of Indebtedness:—Defendants' Exhibits re.
L. V. R. R. Co. 70—Letter of John W. Platten, 2d Vice President, June 30, 1905, to W. C. Alderson, Treasurer, re....1334, 2335
L. V. R. R. Co. Ex. 86—L. V. Coal Co. to L. V. R. R. Co. in payment for capital stocks of Hazleton, Seneca and Righter Coal Cos., deposited with Girard Trust Co., Minutes of Directors, Aug. 24, 1905 .....1471, 1549, 2380
L. V. R. R. Co. Ex. 89—Items embraced in—L. V. Coal Co. to L. V. R. R. Co.—July 30, 1905 .....1687, 2413
Collateral Trust Agreement.
Nov. 1, 1905—Girard Trust Co. Ex. 2 1140
Bonds certified under 1140
Letter of Girard Trust Co. to Root, Clark, Buckner & Howland, July 28, 1914, explaining 1987
Delano Land Co.
Bonds purchased in 1872..... 1144
Buck Mtn. Coal Co. lease of Nov. 1, 1883..... 1629
Stock exempted from proviso of Act of Apr. 15, 1869—Act of March 15, 1872. L. V. R. R. Co. Exhibits 24 and 25. 1126, 2171, 2172
Delaware, Lehigh, Susquehanna & Schuylkill R. R. Co.
Act incorporating, L. V. R. R. Co. Exhibit No. 9.....1114, 2121
Act changing name of, L. V. R. R. Co. Exhibit No. 10....1114, 2122
Delaware, Susquehanna & Schuylkill R. R. Co.
Articles of Association 1123, 2128
Construction—Time of 1132
Cost of maintenance of way and equipment..... 1345
Date of incorporation 1407
Freight rates paid to, by Coxe Bros. & Co. 1399
Income account of 1367

General Index.—Continued.

Delaware, Susquehanna & Schuylkill R. R. Co. (continued).
Purchase of—
Details 1236, 1274
Amt. of investment, cash outlay, etc.... 1336, 1366, 1394, 1407, 2340
Relation of to L. V. R. R. 1113
Revenue accruing to L. V. R. R. between Nov. 1, 1905, and June 30, 1913, on anthracite moved over 1338
Stockholders at time of acquisition by L. V. R. R. Co..... 1126
Department of Justice.
Report of Attorney General—1912—in re organization L. V. Coal Sales Co. 1267
Submisssion of plan of organization of Sales Co. to..... 1266, 1272
Financial History.
Report (Feb. 26, 1914) L. V. R. R. Co.'s system to June 30, 1913, L. V. R. R. Co. Ex. No. 32..... 1152, 2193
Report (Mar. 16, 1914) special examination of property accounts from 1830 to June 30, 1913, and income account, Dec. 1, 1893-June 30, 1913, of various companies embraced in L. V. R. R. Co.'s transportation system, L. V. R. R. Co. Ex. No. 33 ..... 1164, 2255
General Consolidated Mortgage.
Sept. 30, 1903, Girard Trust Co. Ex. No. 1..... 1140
Bonds certified under 1140
Letter of Girard Trust Co. to Root, Clark, Buckner & Howland, July 28, 1914, explaining 1987
Green Land Co.
Charter of, L. V. Coal Co. Ex. No. 2 ..... 1475, 2647
Charter of, Supplement to, April 2, 1872, L. V. Coal Co. Ex. No. 3 ..... 1476, 2649
Consolidated with Luzerne Coal & Iron Co., forming L. V. Coal Co. 1476
Stock of, owned by L. V. R. R. Co..... 1131
Hazleton Coal Co. (First Company.)
Acts of Pennsylvania, incorporating, L. V. R. R. Ex. No. 8.. 1127
Name changed to Hazleton Railroad Company, Act of Mar. 9, 1865 2120
Hazleton Coal Co. (Second Company.)
Certificates of Indebtedness issued June 30, 1905, in payment of capital stock of, L. V. R. R. Ex. No. 86..... 1471, 1549, 2380
Organization of—Meeting Apr. 14, 1896, recommending—L. V. R. R. Ex. No. 97 ..... 2062, 2441
Hazleton Railroad Co.
Merged into L. V. R. R. Co..... 1117
Agreement, Nov. 25, 1867, with L. V. R. R. Co. and C. R. R. of N. J., L. V. R. R. Co. Ex. No. 95 ..... 2062, 2435
Interstate Commerce Commission.
Answer to Question 21, Docket 4914..... 1349, 1687
D. S. & S. Reports to..... 1408
I. C. C. *v.* L. V. R. R. Co.—Appeal from Circuit Court of Appeals, 3d Circuit, Oct. 1, 1897, No. 28, L. V. R. R. Ex. 94. 2061, 2428
Regulations re classification of income, profit and loss, and general balance sheet accounts for steam roads..... 1404
Weighing investigation by, 1912 2005
Laurel Hill Coal Co.—Acts of 1838 and 1839 re, L. V. R. R. Co. Ex. 8 ..... 2115, 2116, 2117
Lehigh & Mahanoy R. R. Co.
Charter rights and franchises of Quakake R. R. transferred to. 1117
Lehigh & N. Y. R. R. Co.
Operated by L. V. R. R. in N. Y. State..... 1122
Lehigh, Luzerne R. R. Co.
Corporate rights of—L. V. R. R. Ex. No. 12..... 1116, 2123

General Index.—Continued.

Lehigh Valley Coal Co.
Bonds—
Interest on 5-10 year coal pledge bonds; L. V. Coal Co. Snow Shoe bonds; Lentz & Everhart Purchase bonds... 1703
in hands of public, 1895-1902, inc..... 1328
5-10 Coal pledge owned by Girard Trust Co..... 1686
Certificates of Indebtedness for advances made by L. V. R. R. Co. 1334, 1350, 1351, 1385, 1410, 1471, 1549, 1680, 1687, 2335, 2380, 2410
Collieries tributary to L. V. R. R. Co.....1647, 1667
Income account, years ending June 30, 1903-1913, inc.....1242, 1707
Date of organization 1131
Formed by consolidation of Green Land Co. and Luzerne Coal & Iron Co. 1476
Output—Increase in 1632, 1684
Repayments to L. V. R. R. Co..... 1349
L. V. Coal Sales Co.
Manner of conducting business 1270
Date of incorporation 1292
Differences with L. V. R. R. Co. as to freight charges..... 1982
Dividends 1739, 1925
Freight paid by 1775, 1809, 1825, 1837, 1930, 1982
Organization—Details of 1234, 1269
Capital Stock—
Outstanding 1756
Original amount 1795
L. V. Freight Co.
Purchase of equipment of in 1893 by L. V. R. R. Co..... 1154
L. V. R. R. Co.
Original name, was Delaware, Lehigh, Schuylkill & Susq. R. R. Co. (q. v.) 1114, 2122
Built expressly for coal traffic—L. V. R. R. Co. Ex. 18. 1122, 1124, 2135
Development of 1118, 1185, 2135
Original line of—purpose for which constructed..... 1118
Physical characteristics of 1202, 1215
Terminal properties at Buffalo 1121
Financial History.
L. V. R. R. Co. Ex. No. 32.....1152, 1157, 1159, 2193
L. V. Rail Way Co.
Relation of to L. V. R. R. Co..... 1112
L. V. R. R. Co. of New Jersey, Relation of, to L. V. R. R.....1119
Loyalsock R. R. Co.
Relation of to L. V. R. R. Co..... 1123
Luzerne Coal & Iron Co.
Charter of—L. V. Coal Co. Ex. 1.....1475, 1476, 2644
Date of incorporation 1132
Merged into L. V. Coal Co. 1476
Maps.
Showing various Railroad lines from anthracite regions in Pennsylvania, and covering territory west from New York Harbor and Hudson River in general way to Buffalo and Pittsburgh, L. V. R. R. Co. Ex. 34 .....1176, 1177, 2278
Map entitled "L. V. R. R. Co., M. & H. Div. Map showing D. S. & S. R. R. office of Division Engineer, Hazleton, Pa., July 5, 1914." L. V. R. R. Co. Ex. No. 75..1340, 1413, 1423, 2348
Map showing area of coal properties of N. Y. & Middle Coal Field R. R. & Coal Co., L. V. Coal Co. Ex. No. 4. 1643, 1644, 2650
Map showing area of coal properties of Coxe Bros. & Co., Inc. L. V. Coal Co. Ex. No. 5 .....1643, 1644, 2651
Map showing area of coal properties of L. V. Coal Co. L. V. Coal Co. Ex. No. 6.....1643, 1644, 2652

General Index.—Continued.

Markle, G. B., Co.
L. V. R. R. Co. natural outlet 1601
Market in which coal is sold, etc..... 1594
Insurance on coal 1794
Manner of handling coal; fixing and determining sales..... 1841
Contract of Dec. 30, 1889, with L. V. R. R. Co.....1590, 1842
Agreement of 1876 with L. V. R. R. Co., L. V. R. R. Co. Ex. No. 30 .....1129, 2191
Petition filed by v. L. V. R. R. Co. before I. C. C., Docket 5917, L. V. R. R. Co. Ex. No. 91.....2042, 2415
Answer of L. V. R. R. to above complaint, L. V. R. R. Co. Ex. No. 92 .....2052, 2423
Minutes.
Nov. 14, 1865—Increase of coal equipment, etc., L. V. R. R. Co. Ex. No. 98 .....2062, 2442
Nov. 13, 1866—Approving agreement with Warriour Run Mining Co., L. V. R. R. Co. Ex. No. 98.....2062, 2442
Dec. 11, 1866—Authorizing Jonah Reese & Son to mine coal from Company's lands at Beaver Meadow, L. V. R. R. Ex. No. 97 .....2062, 2441
Jan. 21, 1873—Accepting Act of Mar. 31, 1868—Investment in mortgages, etc. Accepting Ad. of March 17, 1869—Authorizing railroad and canal companies to straighten, widen, etc., their railroads, etc. Accepting Act of April 15, 1869—Aid in development of coal, iron, etc., interests of Penna., L. V. R. R. Co. Ex. No. 96. (See L. V. R. R. Co. Exs. 22, 23, 24 and 25) 2062, 2437
Apr. 14, 1896—Organization of Hazleton Coal Co., L. V. R. R. Co. Ex. No. 97.....2062, 2441
Aug. 24, 1905—Certificates of Indebtedness—June 30, 1905, L. V. Coal Co. to L. V. R. R. Co. in payment for capital stocks of Hazleton, Seneca and Righter Coal Cos. deposited with Girard Trust Co. L. V. R. R. Co. Ex. No. 86....2062, 2437
Feb. 16, 1912—L. V. Coal Sales Co. Incorporators, L. V. Coal Sales Co. Ex. No. 6.....1737, 2458
Feb. 16, 1912—L. V. Coal Sales Co. Directors, L. V. Coal Sales Co. Ex. No. 7 .....1737, 2460
Feb. 27, 1912—L. V. Coal Sales Co. Directors, L. V. Coal Sales Co. Ex. No. 8 .....1737, 2464
Feb. 28, 1912—L. V. Coal Sales Co. Directors, L. V. Coal Sales Co. Ex. No. 9 .....1737, 2465
Mar. 22, 1912—L. V. Coal Sales Co. Directors, L. V. Coal Sales Co. Ex. No. 12 .....1742, 2478
Feb. 17, 1913—L. V. Coal Sales Co.—Sale of unsubscribed stock 1751
Sept. 26, 1913—L. V. Coal Sales Co., re committee to investigate and report extent of future dividends..... 1747
Oct. 24, 1913—L. V. Coal Sales Co., Report of above committee 1747
Nov. 12, 1913—L. V. Coal Sales Co., re dividends..... 1748
Feb. 27, 1914—L. V. Coal Sales Co.—Demand note of $500,000 to First Nat'l Bank of N. Y..... 1752
Montrose R. R. Co.
Location of 1112
Morris Canal, Lease to L. V. R. R. Co., 1871.....1186
National Storage Company.
Reasons for including in Financial History..... 1161
New York and Middle Coal Field R. R. & Coal Co.
Map showing properties of—L. V. Coal Co. Ex. No. 4. 1643, 1644, 2650
Date of acquisition of capital stock by L. V. R. R. Co.....1132

General Index.—Continued.

Pennsylvania—Legislative policy of re relation between railroads and mining corporations—L. V. R. R. Co. Ex. No. 87....1472, 2382
Pennsylvania and New York Canal and Railroad Co., Incorporation 1865 2146
Penn Haven & White Haven R. R. Co.
Act incorporating—L. V. R. R. Co. Ex. No. 14.....1117, 2127
Pittsburgh & Susquehanna R. R. Co.—Supplement to an Act to incorporate—Mar. 20, 1868—Authorizing Laurel Hill Coal Co. to make a Railroad to Lehigh River—L. V. R. R. Ex. 8..... 2116
Quakake R. R. Co.
Act incorporating—L. V. R. R. Co. Ex. No. 13.....1116, 2126
Righter Coal Co.
Certificates of Indebtedness in payment for capital stock—L. V. R. R. Co. Ex. No. 86.....1471, 1549, 2289
Schuylkill & L. V. R. R. Co.
Lehigh Valley R. R. owns entire capital stock..... 1123
Construction of 1670
Seneca Coal Co.
Certificates of indebtedness for capital stock of—L. V. R. R. Co. Ex. No. 86 .....1351, 1471, 1549, 2380
Stock bought by L. V. R. R. in 1901 for $1,000,000—L. V. R. R. Co. Ex. No. 69.....1389, 2334
Sunbury & Erie R. R.—Supplement to an Act to incorporate—Mar. 20, 1868 (authorizing Laurel Hill Coal Co. to make a railroad to Lehigh River)—Lehigh Valley R. R. Co. Ex. No. 8..... 2116
Temple Iron Co.
Sale of stocks of subsidiary companies.....1732, 1865
United Real Estate Company.
Included in Financial History 1159
U. S. *v.* Delaware, Lackawanna & Western R. R. Co. and D. L. & W. Coal Co. Pleadings and opinion of Circuit Court, U. S., and U. S. District Court, District of N. J. L. V. Coal Sales Co. Ex. No. 55 .....540, 2549
U. S. *v.* Reading, *et al.*
Agreed that counsel may refer to and read from report of opinion of Supreme Court of U. S. 2062
Testimony of R. V. Norris in 1478
Valuation.
Coal handling properties, L. V. R. R. Co. and L. V. Coal Co. L. V. Coal Sales Co. Ex. No. 3.....1210, 1224, 2449
L. V. Coal Sales Co. storage plants—L. V. Coal Sales Co. Ex. No. 49 .....1996, 1999, 2028, 2545
Of L. V. R. R. System—W. J. Wilgus. (See L. V. R. R. Co.'s Exs. 35 to 51, inclusive) 1177
Coal for purpose of taxation 1569
Station grounds and buildings—Method 1634
of Railroad property in N. J. under direction of Chas. Hansel in 1911 1862
Warriour Run Mining Company.
Agreement of Nov. 13, 1866—Minutes approving, L. V. R. R. Co. Ex. No. 98 .....2062, 2442
Wyoming Valley Water Supply Co.
Cap. stock owned by L. V. R. R. Co..... 1380
Yates-Lehigh Coal Co.
U. S. *v.* L. V. R. R. Co.—Account alleged concessions granted to—Charge of Court Mar. 20, 1914—L. V. R. R. Ex. No. 67 1325, 2321
Docket entries—L. V. R. R. No. 68.....1326, 2333

EXAMINER'S CERTIFICATE. 4437a

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA, Petitioner, AGAINST LEHIGH VALLEY RAILROAD COMPANY, *et al.*, Defendants.	June, July and August Sessions, 1914. In Equity No. 11-129.

4438a

I, B. W. B. BROWN, duly appointed by the Court as Special Examiner to take the testimony in the above entitled cause either within or without this District and to report the same to the Court, do hereby certify that, beginning pursuant to notice on the twenty-second day 4439a of June, 1914, and continuing from time to time thereafter, I have taken or caused to be taken and recorded all the testimony of the witnesses produced and the exhibits offered on the part of the defendants, as well as all the proceedings connected therewith, the signing of the testimony by the witnesses respectively being waived by counsel; and that the following is a complete and true record of all such testimony, exhibits and proceedings before the Examiner beginning on July 20th, 1914, and ending with the proceedings on July 31st, 1914, 4440a and including Lehigh Valley Railroad Company Exhibits No. 1 to No. 98, Lehigh Valley Coal Company Exhibits No. 1 to No. 10 and Lehigh Valley Coal Sales Company Exhibits No. 1 to No. 55.

IN WITNESS WHEREOF, I have hereunto set my hand this day of October, 1914.

B. W. B. BROWN,
Special Examiner.

United States District Court,

SOUTHERN DISTRICT OF NEW YORK.

4441

THE UNITED STATES OF AMERICA,
Petitioner,

AGAINST

LEHIGH VALLEY RAILROAD COMPANY, The Lehigh Valley Coal Company, Lehigh Valley Coal Sales Company, Coxe Brothers and Company, Inc., Delaware, Susquehanna and Schuylkill Railroad Company, New York and Middle Coal Field Railroad and Coal Company, The G. B. Markle Company, Girard Trust Company, Eben B. Thomas, Lyman D. Smith, Edward T. Stotesbury, Daniel G. Reid, George F. Baer, Edward B. Smith, William H. Moore, Edward S. Moore, William R. Butler, Henry B. Coxe, and Fred M. Kirby,

Defendants.

4442

Before B. W. B. Brown, Esq., Special Examiner.

4443

New York, July 20th, 1914.

OPENING OF DEFENDANTS' CASE.

4444

APPEARANCES:

THURLOW M. GORDON, Esq., and ARTHUR W. MACHEN, JR., Esq., on behalf of the Petitioner.

E. H. BOLES, Esq., on behalf of the Lehigh Valley Railroad Company, Delaware, Susquehanna and Schuylkill Railroad Company and the individual defendants.

EVERETT WARREN, Esq., on behalf of the Lehigh Valley Coal Sales Company.

F. W. WHEATON, Esq., on behalf of the Lehigh Valley Coal Company, Coxe Bros. & Co., Inc., and New York and Middle Coal Field Railroad and Coal Company.

SILAS W. HOWLAND, Esq., of Messrs. Root, Clark, Buckner & Howland, on behalf of the Girard Trust Company, as trustee.

4445 **David G. Baird**, recalled, on behalf of the Lehigh Valley Railroad Company.

Direct Examination by Mr. Boles:

Q. What is your present position with the Lehigh Valley Railroad Company? A. Secretary.

Q. How long have you held that position? A. About eleven years.

Q. That is since February 18, 1903? A. That is the date.

Q. Prior to that time what position did you hold with
4446 the Lehigh Valley Railroad Company? A. I had various positions; assistant secretary and others.

Q. And you were assistant secretary of the Railroad Company during what period? A. From 1891 to 1903.

Q. And prior to 1891 were you employed by the Lehigh Valley Railroad Company? A. I was.

Q. In what capacity? A. I was assistant to the vice-president, and I was general bookkeeper, I was assistant cashier, and various minor positions.

Q. When did you first enter the employ of the com-
4447 pany? A. February 20th, 1873.

Q. What was the name of the oldest constituent part of the Lehigh Valley Railroad system? A. The Beaver Meadow Railroad and Coal Company.

Q. And when was it incorporated? A. The year 1830.

Q. Have you made a correct and accurate copy of certain portions of the charter of that company? A. I have.

Q. Will you produce it? A. (Witness produces paper.)

4448 Mr. Machen: We have no objection to the production of these portions of the charter, provided we have the right to meet them by any other portions we desire to have incorporated with them.

Mr. Boles: That is fully understood and agreed to.

I offer in evidence section two of the act of April 7, 1830, of the Commonwealth of Pennsylvania, pamphlet laws, 392; section one of the act of March 20th, 1849, pamphlet laws, 185, act of

Pennsylvania, in fact, it is the whole act; and 4449
section two of the act of April 15th, 1857, pamphlet laws, 189, as one exhibit, and all of which sections are part of the charter of the Beaver Meadow Rail-road and Coal Company.

Received and marked **Lehigh Valley Railroad Company Exhibit No. 7.**

NOTE: It is agreed that the Government may refer in briefs or oral argument to any portion of any acts of the General Assembly of the State of Pennsylvania portions of which may be offered 4450
in evidence by the Lehigh Valley Railroad Company or any of the defendants from the printed volumes of the pamphlet laws of the State of Pennsylvania, with the same effect as if said acts were incorporated in full into the record of this case, reserving to the Government any objections which would have been available if the said acts had been proved by duly certified copies.

Q. Chronologically what is the next company in the 4451
Lehigh Valley system? A. The Hazleton Coal Company, which afterwards became known as the Hazleton Railroad Company, I think is the next.

Q. And that company was incorporated under what act? A. That is incorporated under the act of March 18th, 1836.

Q. And have you a correct and accurate copy of that act or any portion of it? A. I have. (Handing papers.)

Q. Have you prepared also a correct copy of section eight of the act of March 20th, 1838? A. Yes.

Q. And a correct copy of section one of the act of 4452
March 8th, 1839? A. I have.

Q. And a correct copy of sections one and two of the act of April 5th, 1849? A. I have.

Q. And a correct copy of section one of the act of March 18th, 1851? A. I have.

Q. And a correct copy of section one of the act of January 12, 1856? A. I have.

Q. And a correct copy of section one of the act of March 8th, 1862? A. I have.

4453 Q. And a correct copy of section two of the act of March 9th, 1865? A. I have.

Q. Do all the sections of the acts I have just referred to relate to the corporate rights and charter powers of the Hazleton Coal Company, afterwards known as the Hazleton Railroad Company? A. They do.

Mr. Boles: I offer the sections just referred to in evidence.

Received and marked **Lehigh Valley Railroad Company Exhibit No. 8.**

4454

Q. Now, the incorporation of what company was the next step in the development of the Lehigh Valley Railroad system? A. The incorporation of the Delaware, Lehigh, Schuylkill & Susquehanna Railroad, which afterwards became known as the Lehigh Valley Railroad Company.

Q. And the Delaware, Lehigh, Schuylkill & Susquehanna Railroad was incorporated under what act? A. Under the act of April 21, 1846.

4455 Q. Have you a correct copy of that act? A. I have.

Q. Will you please produce it? A. Yes, sir. (Handing paper).

Mr. Boles: I offer in evidence a copy of section fourteen of the said act of April 21, 1846.

Received and marked **Lehigh Valley Railroad Company Exhibit No. 9.**

Q. When was the name of the Delaware, Lehigh, Schuylkill & Susquehanna Railroad Company changed
4456 to Lehigh Valley Railroad Company? A. Under the provisions of the act of January 7, 1853, section one.

Q. Have you a correct copy of that section? A. I have. (Handing papers).

Mr. Boles: I offer in evidence a copy of section one of the act of January 7, 1853.

Received and marked **Lehigh Valley Railroad Company Exhibit No. 10.**

Q. Was the Lehigh Valley Railroad Company later projected to connect with the Beaver Meadow Railroad and Coal Company? A. It was. 4457

Q. And under what authority? A. Under authority of section one of the act of March 8th, 1856.

Q. Have you a correct copy of such section? A. I have.

Q. If so will you kindly produce it? A. (Handing papers).

Mr. Boles: I offer in evidence copy of section one of the act of March 8th, 1856. I should say in this connection, that all the acts referred to until further notice are acts of the State of Pennsylvania. 4458

Received and marked **Lehigh Valley Railroad Company Exhibit No. 11.**

Q. And under the provisions of that act was an actual connection made between the Beaver Meadow Railroad and Coal Company and the Lehigh Valley Railroad Company? A. There was.

Q. And what company came next in the development of the system? A. The Jeddo and Carbon County Railroad Company. 4459

Q. Later known as what company? A. Later known as Lehigh & Luzerne Railroad Company, and afterwards Lehigh, Luzerne Railroad Company.

Q. The rails of that company extended in a general way from what point? A. From a connection with the then Hazleton Railroad or Hazleton Coal Company at Lumber Yard northward through Council Ridge by means of a tunnel into what was known, and is known, as the Black Creek Valley. 4460

Q. All the rails of the company being in the so-called Lehigh Coal region? A. They are.

Q. Have you a correct copy of sections one, two and three of March 23rd, 1854, which you have just referred to, and if so will you kindly produce it? A. I have. (Handing papers).

Q. Have you also a correct copy of section one of the act of March 16th, 1855? A. I have.

4461 Q. Have you a correct copy of section three of the act of February 12, 1856? A. I have. (Handing papers).

Q. And a correct copy of section one of the act of April 8, 1857? A. I have. (Handing papers).

Q. All of the sections I have just referred to are part of the corporate rights and charters of the Lehigh & Luzerne Railroad Company, are they? A. They are.

Q. Have you also a copy of section one of the act of April 16, 1858? A. I have.

Q. Does that also relate to the Lehigh & Luzerne Rail-
4462 road Company? A. It does.

Mr. Boles: I offer in evidence the section immediately above referred to.

Received and marked **Lehigh Valley Railroad Company Exhibit No. 12.**

Q. What company came next in the development of the system? A. The Quakake Railroad Company.

Q. Will you tell us in a general way its location? A. The Quakake Railroad Company was built from a con-
4463 nection with the Beaver Meadow Railroad at Black Creek Junction, extended westerly through the Quakake Valley, and, I think, connected with the Catawissa Railroad.

Q. Do its lines lie entirely in the Lehigh Coal region? A. Hardly. The lines of that road were afterwards extended westward into what is now called the Mahanoy Coal Fields, or middle coal fields.

Q. They are all in the middle region? A. All in the middle region.

Q. That company was incorporated under what act?
4464 A. Under the act of April 25, 1857.

Q. Have you a correct copy of sections one and four of that act? A. I have. (Handing papers.)

Mr. Boles: I offer in evidence the said sections.

Received and marked **Lehigh Valley Railroad Company Exhibit No. 13.**

Q. What company came next in the development of the system? A. The Penn Haven and White Haven Railroad Company.

Q. Incorporated under what act? A. Under the act 4465
of 4th of May, 1857.

Q. Have you a correct copy of section one of that act, and if so, will you kindly produce it? A. Yes.

Q. Have you also in that connection a copy of section three of the act of April 11, 1859? A. I have.

Q. Does it refer to the Penn Haven & White Haven Railroad Company? A. It does.

Q. And also a correct copy of section two of the act of April 2, 1860? A. I have.

Q. Does it refer to the Penn Haven & White Haven 4466
Railroad Company? A. It does.

Mr. Boles: I offer in evidence the sections just referred to.

Received and marked **Lehigh Valley Railroad Company Exhibit No. 14.**

Q. In a general way, what was the location of the Penn Haven & White Haven Railroad Company? A. It was from a connection with the Beaver Meadow Railroad at Penn Haven running through the Valley of the 4467
Lehigh northward to a connection with the Lehigh & Susquehanna Railroad at or near White Haven.

Q. What company came next in the development of the system? A. I think that is about the end of our line, that is, of those I have taken out.

Q. To what company were the charter rights and franchises of the Quakake Railroad subsequently transferred? A. To the Lehigh & Mahanoy Railroad Company.

Q. Of the companies which we have mentioned so far
which have been merged and consolidated into the Le- 4468
high Valley Railroad Company? A. The Hazleton Railroad, the Beaver Meadow Railroad, the Penn Haven & White Haven Railroad and the Lehigh & Mahanoy Railroad.

Q. Between what points was the Lehigh Valley Railroad Company originally constructed? A. From the Delaware River at Easton to a connection with the Beaver Meadow Railroad at Mauch Chunk.

4469 Q. Can you say from your examination of the minutes and records of the company for what purpose the said portion was promoted and constructed? A. I can.

Q. And what was it? A. The transportation of anthracite coal.

Q. To where? A. To Eastern markets reached by means of various connecting lines, both railroad and canal.

Q. Now, what were the connecting outlets for transportation at Easton? A. The Central Railroad of New
4470 Jersey, the Belvidere Delaware Railroad at Easton, and afterwards the Morris & Essex Railroad at Easton, together with the Delaware division canal at Easton, also the Morris Canal.

Q. The Morris & Essex Railroad is part of what system? A. The Delaware, Lackawanna & Western Railroad system.

Q. And the Belvidere Railroad is part of what system? A. Part of the Pennsylvania Railroad system.

Q. Did the Lehigh Valley at that time connect with any other carriers en route? A. A year or so later it
4471 connected with the North Pennsylvania Railroad at South Bethlehem.

Q. Now part of what system? A. Now part of the Reading system.

Q. So that within a few years of its incorporation it connected with the Reading at South Bethlehem, with the Pennsylvania, Lackawanna and the Jersey Central at Easton, and with the Morris Canal and the Delaware Canal just across the river from Easton? A. That is right.

4472 Q. When was the road to Easton actually opened for transportation? A. In 1855.

Q. Did the company later project an outlet to tide on its own account? A. It did.

Q. And in what manner? A. By building under the charter name of the Easton & Amboy Railroad across the State of New Jersey to tidewater at Perth Amboy.

Q. Did it purchase extensive terminal properties at Perth Amboy? A. It did.

Q. And developed them in what manner? A. By building large coal piers for the transshipment of anthracite coal into boats. 4473

Q. Do you know the extent of the terminal development there in the way of acreage? A. Not offhand.

Q. Was the terminal developed at that time exclusively for the handling of anthracite? A. At that time it was.

Mr. Machen: You mean at Perth Amboy?

The Witness: I do.

4474

Q. What was the year? A. The road was opened for business across New Jersey in 1875.

Q. And what further development was made then in New Jersey? A. An outlet was sought to New York Harbor. This was not accomplished until along in the 80's, possibly 1886 or 1887, by means of various lines built at different times from the main line of the Easton & Amboy Railroad at South Plainfield to the Hudson River at Jersey City.

Q. And all of the subsidiary companies in New Jersey were subsequently merged and consolidated into what company? A. Into the Lehigh Valley Railroad Company of New Jersey. 4475

Q. What relation does that company now hold to the Lehigh Valley Railroad Company? A. The Lehigh Valley Railroad Company is the owner of the entire outstanding capital stock of the Lehigh Valley of New Jersey, and also operates the same under a lease.

Q. Now, turning to the development of the system northward, what was the first projection? A. The first projection was the acquisition of what was known as the North Branch Canal. The North Branch Canal was originally part of the State System of Canals built by the State of Pennsylvania. The State sold its canals. The North Branch division reached from Northumberland to the New York state line near Athens. It was sold by the State to the Sunbury & Erie Railroad Company. 4476

Q. Now part of what system? A. Now part of the Pennsylvania Railroad system. The Sunbury & Erie

4477 Railroad Company sold its holdings to two different companies: that from Northumberland to Wilkes-Barre to the Wyoming Canal Company, and that from Wilkes-Barre north to the New York State line to the North Branch Canal Company. The Lehigh Valley Railroad Company by contract obtained the control of the North Branch Canal. By an enabling act, it was permitted to build a railroad upon or along the canal and, by legislative enactment, the name of the company was changed to Pennsylvania & New York Canal & Railroad Com-
4478 pany.

Q. And what is the present relation of that company to the Lehigh Valley Railroad Company? A. The Pennsylvania & New York Canal & Railroad Company is owned by the Lehigh Valley Railroad Company through the control of the entire capital stock; and it operates the property by means of a lease.

Q. Made when? A. Made in 1888, I think.

Q. Will you describe in a brief way the development of the system in the State of New York? A. The acquisi-
4479 tion of railroad lines in New York began about 1875 or 1876, when, at a foreclosure sale of the Geneva, Ithaca and Athens Railroad, it was purchased in the interest of the Lehigh Valley. They reorganized it and it was afterwards known as the Geneva, Ithaca & Sayre Railroad. It reached from a connection with the Lehigh Valley system at the New York State line northward by way of Ithaca to Geneva and also by way of Ithaca to Cayuga, at both places making connection with the New York Central system.

Q. And what was the time that you are just speaking
4480 of? A. The purchase was made in 1875 or 1876.

Q. That gave the company an outlet to what terminal point? A. To Ithaca, Geneva and Cayuga; Geneva and Cayuga being connections with the New York Central and Ithaca was the southern end of Cayuga Lake, from which point, at that time, there were some shipments by water.

Q. What was the next step in the development of the system in New York State? A. The next step was the building of lines to reach Buffalo and Suspension Bridge.

Q. Now, what was the necessity of that step? A. To find an outlet for the tonnage of the company, principally anthracite coal. 4481

Q. Which had previously obtained its westbound outlet in what manner? A. By going over the lines of other roads.

Q. Such as what? A. The Erie and New York Central.

Q. What arrangement was had with the Erie Railroad for that purpose? A. The Lehigh Valley for many years had a trackage arrangement with the Erie, first by building a third rail, the Erie at that time being a six foot gauge to Elmira, and by an agreement the third rail system was extended to Buffalo by means of which trains of the Lehigh Valley reached Buffalo. 4482

Q. Using one rail of the Erie and one rail of its own? A. Yes, sir.

Q. And that continued until what time? A. About the year 1892.

Q. And what step took place in the Lehigh Valley system of development then? A. It was found necessary, to properly take care of the traffic, to have our own line direct across the State of New York to Buffalo and Suspension Bridge. 4483

Q. And what company projected that line? A. There were several companies. In the first place, it became necessary to build an entire new line north, practically from the State line to Geneva, so as to avoid the heavy grades into and out of Ithaca. This was done by building from Van Etten Junction westward to a point at the southern end of Seneca Lake and thence to Geneva, which afforded a much better line with easier gradients than the old line through the town of Ithaca. From Geneva west that line was built under the name of the Buffalo & Geneva Railroad Company. This brought it to the outskirts of the City of Buffalo, where it made a connection with a small line that had been built some years before from a point in the City of Buffalo eastward to the city line. 4484

Q. And were extensive terminal properties bought at Buffalo? A. Prior to the building of the road, large terminal properties had been purchased on the lake front in the City of Buffalo.

4485 Q. In anticipation of what? A. In anticipation of the line to Buffalo, and the proper care of the traffic both in and out bound over the lake, and also from other railroad connections entering in Buffalo.

Q. What development has been made on those terminal properties? A. Very large structures have been erected on our terminal property at Buffalo for the transshipment of coal, ore and merchandise of various description.

Q. All the companies which you have just mentioned,
4486 and the lines which you have just mentioned in the State of New York, subsequently were merged and consolidated into what company? A. Into a corporation called The Lehigh Valley Rail Way Company.

Q. And what relation does that company at present bear to the Lehigh Valley Railroad Company? A. The Lehigh Valley Rail Way Company is controlled by the Lehigh Valley Railroad Company by means of the ownership of the entire capital stock.

Q. And is that company leased to the Lehigh Valley?
A. It is leased to the Lehigh Valley Railroad Company.
4487 Q. What other company does the Lehigh Valley Railroad Company lease and operate in the State of New York? A. The Lehigh & New York Railroad Company.

Q. The rails of which give it an outlet to what terminals? A. To the Port of Fair Haven on Lake Ontario.

Q. And what was the purpose of securing that lease? A. It was to afford an outlet for anthracite coal, and to develop the business originating on the line of that road as a tributary to the system.

Q. What is the location of the Montrose Railroad
4488 Company? A. The Montrose Railroad is a line extending from Tunkhannock, on the Pennsylvania & New York Canal & Railroad Company's railroad, running in a northerly direction to Montrose, the county seat of Susquehanna County, being about twenty-eight miles long.

Q. What is its relation to the Lehigh Valley Railroad? A. The capital stock of the Montrose Railroad is owned by the Lehigh Valley Railroad and it is operated under a lease, also.

Q. What is the relation of the Lehigh Valley to the 4489
Schuylkill & Lehigh Valley Railroad Company? A. The Lehigh Valley Railroad Company owns the entire capital stock of the Schuylkill & Lehigh Valley Railroad Company.

Q. Into what anthracite region, if any, does that company run? A. It runs into the lower or Schuylkill coal fields.

Mr. Machen: Is that the Pottsville Branch?
The Witness: Yes.

4490

Q. What is the relation of the Lehigh Valley Railroad to the Delaware, Susquehanna & Schuylkill Railroad Company? A. The Lehigh Valley Railroad Company owns the entire capital stock of the Delaware, Susquehanna & Schuylkill Railroad Company.

Q. Have you a correct copy of the articles of association of the Delaware, Susquehanna & Schuylkill Railroad Company? A. I have.

Q. And if so, will you produce it? A. (Handing papers). 4491

Mr. Boles: I offer the copy in evidence.
Received and marked **Lehigh Valley Railroad Company Exhibit No. 15.**

Q. What is the relation of the Lehigh Valley Railroad Company to the Easton & Northern Railroad Company? A. The Lehigh Valley Railroad Company controls the Easton & Northern Railroad Company by means of the ownership of the entire capital stock.

Q. And of the Loyalsock Company, what? A. In the 4492
same way.

Q. And of the State Line & Sullivan Railroad Company? A. The Lehigh Valley Railroad Company operates the State Line & Sullivan Railroad by reason of a lease made by the Pennsylvania & New York Canal & Railroad Company of the railroad of the State Line & Sullivan Railroad Company.

Q. I show you a so-called corporation chart, Lehigh Valley Railroad Company and associated lines, E. F. A.,

4493 875, prepared in the office of the Chief Engineer of the Lehigh Valley Railroad Company, April 16, 1909, and revised to April 7, 1914. Is that chart a correct exposition of the various relations of the subsidiary companies to the Lehigh Valley Railroad Company as of the date mentioned, April 7, 1914? A. It is.

Mr. Boles: I offer the chart in evidence.

Received and marked **Lehigh Valley Railroad Company Exhibit No. 16.**

4494 Q. I show you a statement marked "Lehigh Valley Railroad system, statement of mileage June 30, 1913," showing first track miles, second, third and fourth track miles, yard tracks and sidings and totals, and also restated by divisions, and I ask you if that is a correct statement of what it purports to show? A. It is.

Mr. Boles: I offer it in evidence.

Received and marked **Lehigh Valley Railroad Company Exhibit No. 17.**

4495 Q. Have you made various extracts from the annual reports of the Board of Directors of the Lehigh Valley Railroad Company to its stockholders from the year 1855 to 1906? A. I have.

Q. I show you a statement entitled "Extracts from the Annual Report of Board of Directors of Lehigh Valley Railroad Company to its stockholders for the year 1855, and from like reports for various years to 1906," and will ask you whether the copies are correct? A. The copies were made in my office and are correct.

4496 Mr. Boles: I offer all of said extracts as one exhibit.

Received and marked **Lehigh Valley Railroad Company Exhibit No. 18.**

Mr. Machen: Note an objection on behalf of the Government to the admissability of extracts from the annual reports of the Board of Directors of the Lehigh Valley Railroad Company as evidence on its own behalf. No objection to the mode of proof.

Q. Have you prepared a copy of section ninety of the act of the State of Pennsylvania of May, 1857, and if so, will you kindly produce it? A. I have. (Producing paper.) 4497

Mr. Boles: I offer the section in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 19.**

Q. Have you prepared a correct copy of sections one, two and three of the acts of the State of Pennsylvania of May 16th, 1861, and if so, will you kindly produce it? A. I have. (Producing papers.) 4498

Mr. Boles: I offer that in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 20.**

Q. Have you prepared a correct copy of section one of the act of March 24, 1865, of the State of Pennsylvania, and if so, will you kindly produce it? A. I have. (Producing paper.)

Q. And also a correct copy of section one of the act of April 26th, 1870, and if so, will you kindly produce it? A. I have. (Producing paper.) 4499

Mr. Boles: I offer the two sections in evidence as one exhibit.

Marked **Lehigh Valley Railroad Company Exhibit No. 21.**

Q. Have you prepared a correct copy of section one of the act of March 31, 1868, and if so, will you kindly produce it? A. I have. (Producing paper.)

Mr. Boles: I offer the section in evidence. 4500

Marked **Lehigh Valley Railroad Company Exhibit No. 22.**

Q. Have you prepared a correct copy of section one of the act of March 17, 1869, of the State of Pennsylvania, and if so will you kindly produce it? A. I have. (Producing paper.)

Mr. Boles: I offer the section in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 23.**

4501 Q. Have you prepared a correct copy of section one of the act of April 15, 1869, of the State of Pennsylvania, and if so, will you kindly produce it? A. I have. (Producing paper.)

Mr. Boles: I offer the section in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 24.**

Q. Have you prepared a correct copy of section seven of the act of March 15, 1872, of the State of Pennsyl-
4502 vania, and if so will you kindly produce it? A. I have. (Producing paper.)

Mr. Boles: I offer that section in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 25.**

Q. Can you state who were the stockholders of the Delaware, Susquehanna & Schuylkill Railroad Company at the time the stock was acquired by the Lehigh Valley Railroad Company and the number of shares held by
4503 each holder? A. At the time of the purchase of the stock of the Delaware, Susquehanna & Schuylkill Railroad Company by the Lehigh Valley Railroad Company it was owned by parties as follows: Estate of Eckley B. Coxe, deceased, 8,000 shares; Alexander B. Coxe, 8,000 shares; estate of Henry B. Coxe, deceased, 6,000 shares; Eckley B. Coxe, Jr., 6,000 shares; estate of E. B. Ely, deceased, 2,000 shares, a total of 30,000 shares.

Q. And will you state who were the stockholders of Coxe Brothers & Company, Inc., at the same time, and
4504 the number of shares held by each holder? A. The list of stockholders of Coxe Brothers & Company at the time of the purchase thereof by the Lehigh Valley Railroad Company was as follows: Estate of Eckley B. Coxe, deceased, 15,521 shares; Alexander B. Coxe, 15,521 shares; Estate of Henry B. Coxe, deceased, 11,640 shares; Eckley B. Coxe, Jr., 11,640 shares; Estate of E. B. Ely, deceased, 3,881 shares, a total of 58,203 shares.

Q. Were the stocks of both companies acquired on the same date? A. Yes.

Q. Is Mr. Charles Steele a member of the Board of 4505
Directors of the Lehigh Valley Railroad Company? A. He is not.

Q. Was he ever a member? A. He was.

Q. When did he resign? A. He resigned, effective April 15, 1914.

Q. Was George F. Baer ever a member of the Board of Directors of the Lehigh Valley Railroad Company? A. He was, yes.

Q. When did he resign? A. He resigned, effective March 18, 1914. 4506

Q. And has he since died? A. He has.

Q. Do you know on what date? A. April 26, 1914.

Q. When did Mr. Baer file his resignation with the Board? A. That I cannot answer offhand.

Q. Was it sometime prior to its effectiveness? A. It was tendered some time prior.

Q. A month or more? A. Perhaps.

Q. Have you ascertained the acreage in coal measures and the acreage in barren measures which belonged to the Beaver Meadow Railroad & Coal Company at the time of the merger with the Lehigh Valley Railroad 4507
Company? A. I have.

Q. Will you state the amounts? A. The mines owned by the Beaver Meadow Railroad & Coal Company at the time that company was merged into and with the Lehigh Valley Railroad, consisted of 1,063 acres, of which 708 acres were within the coal measures and 355 outside of the coal measures.

Q. Have you ascertained similar figures with respect to the lands owned by the Hazleton Coal Company, subsequently known as the Hazleton Railroad Company, at 4508
the time of its merger with the Lehigh Valley Railroad Company? A. I have.

Q. Will you state them? A. At the time of the merger of the Hazleton Railroad into and with the Lehigh Valley Railroad it was the owner of 1,863 acres of land, of which 1,083 acres were within the coal measures and 780 acres were outside of the coal measures.

Q. Did the Lehigh Valley Railroad Company enter into an indenture of mortgage on May 1st, 1897, with

4509 the Girard Life Insurance, Annuity & Trust Company of Philadelphia, now known as the Girard Trust Company? A. It did.

Q. I show you what purports to be a copy of said mortgage and will ask you whether that is a true and correct copy thereof? A. It is.

Mr. Boles: I offer the copy in evidence, asking, however, that only the portions marked on pages 7, 18, and 19 be printed, with leave on the part of the Government to ask that any other pages be
4510 printed.

Marked **Lehigh Valley Railroad Company Exhibit No. 26.**

Q. I show you what purports to be copy of an agreement made May 31, 1888, between the Lehigh Valley Railroad Company and the American Improved Cement Company and supplementary thereto an agreement of January 3rd, 1893, between the Lehigh Valley Railroad Company of the first part, the Philadelphia & Reading
4511 Railroad Company as lessee of the Lehigh Valley Railroad Company of the second part, and the American Cement Company of the third part, and ask you whether said agreement and supplement were actually entered into on the dates mentioned? A. They were.

Q. And whether the copies I have shown you are correct copies? A. They are.

Mr. Boles: I offer them in evidence.

Mr. Machen: Note an objection on behalf of the Government to the admission of these copies as irrelevant.

4512 Marked **Lehigh Valley Railroad Company Exhibit No. 27.**

Q. I show you what purports to be a memorandum of agreement made December 7th, 1863, between the Franklin Coal Company and the firm of Parrish & Conyngham, and ask you whether that is a correct copy of the agreement actually entered into on that date? A. Yes.

Q. How does that agreement happen to be in your files? A. By reason of the fact that the property described in the agreement afterwards came into the possession of the Lehigh Valley Railroad. 4513

Q. And with it came the original agreement of which this is a copy? A. Yes, sir.

Q. Is that copy correct? A. It is.

Mr. Boles: I offer it in evidence.

Mr. Machen: Note an objection to it as irrelevant.

Marked **Lehigh Valley Railroad Company Exhibit No. 28.** 4514

Q. Did the Lehigh Valley Railroad Company acquire a branch line of railroad from the said Franklin Coal Company? A. It did.

Q. About what time? A. I cannot give the date; I would not like even to approximate it.

Q. I show you what purports to be a copy of a memorandum of agreement made May 23, 1884, between the Lehigh Valley Railroad Company and John J. Detwiler and others and ask you if this is a correct copy of the agreement actually entered into between said parties on that date? A. It is. 4515

Mr. Boles: I offer the same in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 29.**

Q. I show you what purports to be a copy of an agreement made the first day of December, 1876, between the Lehigh Valley Railroad Company of the first part and George B. Markle, William Lilly and Asa Packer, trading under the firm name of George B. Markle & Co. of the second part, and ask you if it is a correct copy of an agreement actually entered into between the parties on that date? A. It is. 4516

Mr. Boles: I offer the agreement in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 30.**

Q. Did you know Asa Packer? A. I did.

4517 Q. What was his connection with the Lehigh Valley Railroad Company? A. He was president at the time of his death.

Q. And do you know what his various relations to the company had been up to the time of his death? A. Asa Packer was the builder of the Lehigh Valley Railroad and for the greater time subsequent to the beginning of operations he was its president; he was for a time vice president, I think perhaps for a year or two was secretary and at another time during that period he was a
4518 member of the Board of Directors.

Q. Is the Asa Packer mentioned in this agreement the same Asa Packer who is mentioned in the Act of Incorporation of the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company? A. Yes, sir.

Q. And also mentioned as one of the incorporators in several of the other acts of assembly which you have referred to this morning? A. The same individual.

Q. In other words there was no other Asa Packer connected with the Lehigh Valley Railroad? A. Never.

Q. Or ever with any of its subsidiary companies? A.
4519 No, sir.

Q. Is that the same Asa Packer who was one of the founders of the Lehigh University? A. Yes, the founder.

Q. And did that University for some time hold a large amount of stock of the Lehigh Valley Railroad Company?

Mr. Machen: Objected to as irrelevant.

A. I believe so.

Q. Do you know how much? A. I do not off-hand.

4520 Q. Do you know when they sold it? A. I do not.

Q. Do you know whether that was the same stock that was acquired by some outside railroad companies at the time of its sale by the Lehigh University? A. The stock acquired by the other railroad companies mentioned was stock that stood in the name of the Estate of Asa Packer

Q. Do you know whether the beneficiary there under was the Lehigh University? A. The Lehigh University was a beneficiary of the Will of Asa Packer, yes.

Q. Do you know whether they were the beneficiary in respect of this particular stock? A. No, I could not answer. 4521

Q. What was the common capital stock of the Lehigh Valley Railroad Company of June 30, 1913? A. $60,501,700.

Q. Divided how? A. Into 1,210,034 shares of a par value of $50.

Q. And what was the bonded indebtedness on the same date? A. The bonded indebtedness of June 30th, 1913, was $85,840,669.18. 4522

Q. Did that bonded indebtedness represent the total funded debt on that date? A. The total funded debt, and I also think some outstanding real estate mortgages, which accounts for the uneven figures.

Q. And what was the par value of the preferred stock on that date? A. $106,300.

Q. Divided how? A. Consisting of 2,126 shares of the par value of $50 each.

Q. How long has the Lehigh Valley Railroad Company owned more than a majority of the capital stock of the Lehigh Valley Coal Company? A. It has always owned 4523 the stock of the Lehigh Valley Coal Company.

Q. And what was the date of organization of Lehigh Valley Coal Company? A. It was formed in 1872 by merger of the Luzerne Coal & Iron Company and the Green Land Company, and took the name of the Lehigh Valley Coal Company in 1875.

Q. Did the Lehigh Valley Railroad Company own any of the stock of the Green Land Company? A. It did.

Q. How much? A. All of it.

Q. How long had it prior to the merger? A. A year or 4524 more.

Q. Did it own any of the stock of the Luzerne Coal & Iron Company? A. It owned all of it.

Q. And how long had it had that property prior to the merger? A. Three or four years probably.

Q. And in exchange for those stocks did it acquire the entire capital stock of the Lehigh Valley Coal Company? A. It did.

4525 Q. When was the Green Land Company incorporated? A. It was organized pursuant to statutes of the State of Pennsylvania on the 29th of May, 1871.

Q. And when was the Luzerne Coal & Iron Company incorporated? A. It was incorporated under an act of April 11, 1868.

Q. Do you know the actual date of incorporation? A. No, I do not.

Q. It was shortly after that date? A. Oh, practically immediately after; that or the following year.

4526 Mr. Machen: Was this a special act of incorporation?

Mr. Boles: A special act.

Q. Do you know the time of construction of the Deleware, Susquehanna & Schuykill Railroad Company? A. I think it was completed in 1892.

Q. When did the Lehigh Valley Railroad Company acquire the capital stock of the New York & Middle Coal Field Railroad & Coal Company? A. At various times since 1872.

4527 Q. About what portion of the stock was acquired in 1872? A. A control; more than a majority.

Q. Has that company ever produced any coal? A. It has not.

Q. What relation has it had to the production of coal? A. It leases the land which it owns to the independent operators.

Q. And receives from them rent for the privileges? A. It does.

Q. Has it any other relation of any kind to the pro-
4528 duction of coal other than the leasing of its lands? A. It has not.

Q. Has the Lehigh Valley Railroad Company ever owned or acquired any anthracite lands other than those you have mentioned which it acquired by the merger and consolidation of the Beaver Meadow Railroad & Coal Company and the Hazleton Coal Company subsequently called the Hazleton Railroad Company? A. It has not.

Q. Is it true that prior to 1874, therefore, the Lehigh Valley Railroad Company had acquired a considerable

body of anthracite lands in Pennsylvania? A. It is not 4529
true.

Q. I show you the annual report of the Lehigh Valley Railroad Company's Directors to its stockholders for the year 1868 and will ask you to read from pages 13 and 14 thereof? A. (Reading.) "On June 1st, 1868, by the merger of the stock of the Hazleton Railroad Company and soon thereafter by the similar merger of the stock of the Lehigh, Luzerne Railroad Company this company came into possession of said road with all their rights, franchises and property, these two roads having been op- 4530
erated by A. Pardee & Company, lessor. We subsequently purchased from them the rolling stock then in use upon said roads. By these two mergers and by purchase of rolling stock and other property from the lessee there inured to this company all the tracks of those two roads and tracks under the breakers as follows: single tracks 30.05 miles; double tracks 7.42 miles; sidings 19.71 miles, making a total length of tracks of 65.40 miles. Also about 1,800 acres of valuable coal land and improvements thereon capable of producing a large amount of coal annually, and which has produced 106,980 tons since 4531
June 1st, which land is under lease to A. Pardee & Company who pays this company an annual rental per ton for the coal mined therefrom. Also the unsold portions of a town called Hazleton, together with all the houses, buildings and fixtures belonging to the two railroad companies and those belonging to the lessees which pertain to the working of the roads, including a stone engine house, with stalls for twenty-one engines, and a complete set of shops of stone and brick of a substantial character well furnished with tools, machinery and facilities for 4532
building and repairing engines, cars, machinery for the mines, and collieries of the region, most of whom rely mainly on these shops for such work. Also a large amount of iron, timber and other materials on hand and all the rolling stock belonging to both these roads and to the lessees."

Q. The lessees, referring to A. Pardee & Company? A. Yes.

Q. Are the acres of valuable coal lands referred to in that report as about 1,800 acres the same acres to which

4533 you testified this morning as secured from the Hazleton Coal Company and known as the Hazleton lands? A. Yes, sir.

Q. And which you gave the accurate acreage of as 1,863 acres? A. Yes, sir.

Q. Of which 780 were barren and 1,083 were coal measures? A. Yes.

Q. Has the Delaware, Susquehanna & Schuylkill Railroad Company been operated as part and parcel of the Lehigh Valley Railroad system since November 8th, 1905?

4534 A. It has.

Q. Page 17 of the petition in this case, paragraph four, states that the Lehigh Valley Railroad and its officers and directors and the Delaware, Susquehanna & Schuylkill Railroad Company, among others, have been and are parties to a combination or conspiracy to restrain and monopolize, and have been and are attempting to monopolize and monopolizing the production, transportation and sale in interstate commerce of anthracite coal from mines and lands located along the lines of Lehigh Railroad, by acquiring control of such mines and lands, by acquiring

4535 control of the output of independent producers, by exerting the power of Lehigh Railroad as a carrier to give undue preference and advantages to the coal producing and trading companies controlled by it, and to discriminate against their competitors and by other means, is that true?

Mr. Machen: Objected to as too general and calling for the witness' opinion on a question of law.

A. It is not.

4536 Q. Has it ever been true?

Mr. Machen: Same objection.

A. It never has.

Q. Do you state that based upon your connection with the Lehigh Valley Railroad Company since 1873?

Mr. Machen: Same objection.

A. I do.

Q. And a large part of that time you were also officially 4537
connected with the Lehigh Valley Coal Company? A. I was, for a part of the time.

Q. And you also had that in view in making your answer? A. I did.

Q. Pages 17 and 18 of the petition in this case state that a certain Article was inserted in the Constitution of Pennsylvania which went into effect January 1, 1874, stating that no incorporated company doing the business of a common carrier shall directly or indirectly prosecute or engage in mining or manufacturing articles for transportation over its tracks; has the Lehigh Valley Railroad 4538
Company ever directly or indirectly been engaged in mining or manufacturing articles for transportation over its tracks.

Mr. Machen: Objected to as calling for the witness' opinion on a question of law.

A. No, sir.

Q. The Petition on page 18 states that thereafter—that is, after 1874—Lehigh Valley Railroad Company
continued to acquire anthracite coal bearing lands, is 4539
that true? A. It is not.

Q. Has the Lehigh Valley Railroad Company ever acquired a single acre or a single foot, square foot, of coal lands since 1874? A. Not to my knowledge.

Q. Would you know if it had? A. I think I would.

Q. Would the records of the acquisition be in your office? A. They probably would.

Q. Have you at various times attended meetings of the Board of Directors of the Lehigh Valley Coal Company? A. Yes, sir. 4540

Q. Did any officer or director of the Lehigh Valley Railroad Company ever come to those meetings and dominate it?

Mr. Machen: Objected to as too general and calling for an opinion.

A. No, sir.

Q. Have you ever seen any evidence of the acts of the Lehigh Valley Coal Company so far as they came in your

4541 official cognizance as an officer of that company, while you held such office, being dominated and controlled or directed by the Lehigh Valley Railroad Company?

Mr. Machen: Same objection.

A. No, sir.

Q. What other name was Coxe Brothers & Company, Inc., called? A. Cross Creek Coal Company.

Q. And when was its name changed? A. I cannot give the exact date; I don't remember.

4542 Q. Did that company ever lease any of the lands which the Lehigh Valley Railroad Company acquired through the merger of the Beaver Meadow Railroad & Coal Company? A. It did.

Q. Did it mine them? A. It did.

Q. Was Coxe Brothers & Company actively engaged in the mining of coal at the time of the acquisition of the stock of Coxe Brothers & Company by the Lehigh Valley Railroad Company? A. Yes. I should amplify that by saying that the Beaver Meadow Lands so-called were

4543 leased to the Cross Creek Coal Company, the immediate predecessor of the present Coxe Brothers & Company, Inc.

Q. When referring to the Beaver Meadow lands you mean the same lands which you testified this morning as comprising a total acreage of 1,063 acres, of which 708 were coal measures and 355 barren? A. I do.

Q. Are you the custodian of contracts of the Lehigh Valley Railroad Company? A. I am.

Q. Did the Lehigh Valley Railroad Company ever make a contract for the purchase of coal on a 65 per cent

4544 basis, or, in other words, did the Lehigh Valley Railroad ever enter into any of the so-called 65 per cent contracts? A. No, sir.

Q. Or any of the so-called 60 per cent contracts before the 65 per cent basis was arranged for in the trade? A. No, sir.

Q. Did the Lehigh Valley Railroad Company ever enter into any contract of any kind for the purchase of anthracite coal except for its own railroad locomotive, etc., supply purposes? A. No, sir.

Q. Page 34 of the petition in this case says that the 4545
new contracts, that is the 65 per cent contracts, further provided that the independent operator must sell to the Railroad or Railroad Coal Company his entire output of coal for the life of his mine, is that true? A. The Railroad Company was no party to any such contract and, therefore, the statement is not true.

Q. Is there any obligation that you know of upon any independent producer or any other coal company to sell any part of his or its output to the Lehigh Valley Railroad Company except as the statement may be modified 4546
as to the Railroad Company's own supply of coal for use in its locomotives, etc.? A. None whatever.

Q. Page 34 states that in respect to these 65 per cent. contracts the first clause was insisted upon by the combined railroads and railroad coal companies in order to withdraw from competition for all time the output of independent operators, is that statement true?

Mr. Machen: Objected to, for the reason that the matter is *res judicata* under the decision of the Supreme Court in the case of United States 4547
against the Reading Company, et al., and because the witness is not shown to have any knowledge upon the subject.

A. It is not true so far as the Lehigh Valley Railroad is concerned.

Mr. Boles: I would say in answer to that objection that while the validity of the 65 per cent contract *per se* is a matter *res adjudicata* by the Supreme Court of the United States, nevertheless 4548
the conclusion which is stated on page 34 is not touched upon in the opinion of the Supreme Court, not even touched upon.

Q. Page 50 of the petition states that many of the leases made by the Lehigh Valley Coal Company and other subsidiary companies of the Lehigh Valley Railroad Company of anthracite coal bearing lands to independent operators contain covenants by which all coal

4549 mined upon the leased premises shall be shipped in such manner as to give to Lehigh Railroad or to transportation lines preferred by it the long haul; do you know of any such leases? A. I have in mind only one lease now that contains any provision in regard to the shipments being over the lines of the Lehigh Valley Railroad.

Q. And that lease is what? A. That is the lease of the New York & Middle Coal Field Railroad & Coal Company, the Coal Ridge Improvement & Coal Company and the Packer Coal Company to the Midvalley Coal
4550 Company.

Q. Is the Lehigh Valley Railroad Company in any way a party to that agreement? A. It is not.

Q. Have you ever requested any of the officers or employes of the Lehigh Valley Railroad Company to ascertain or seek the observance of the clause in that lease as to the routing of anthracite over the railroad? A. Never heard the question raised.

Q. Page 50 of the petition goes on to say that the annual shipments of operators bound by such covenants
4551 at times have been very large; do you know of any tonnage on the Lehigh Valley Railroad that is bound to move over it by any such covenants? A. No, sir.

Q. Do you know of any parties that are bound to the Lehigh Valley Railroad Company by any such covenant?

Mr. Machen: Do you mean legally bound or bound in law or what?

Mr. Boles: Whatever you mean; I am using your petition.

4552 Mr. Machen: You are asking the witness. I want to get into the sense he is answering.

Mr. Boles: You can construe it any way you please.

Mr. Machen: I object to your asking the witness a question of law; if you mean to ask the witness' opinion whether any operator is bound to ship his coal by the Lehigh Valley Railroad I object; if you ask him whether there were any such covenants in any lease then the leases can be produced.

Q. (Question read). A. I do not. 4553

Q. If such covenants existed they would be in the contracts in your care, would they not? A. They would.

Q. And are there any? A. I know of none.

Q. Have you a copy of the power of attorney and printed circular sent to the stockholders of the Lehigh Valley Railroad Company in the early part of 1912 in respect of the extra dividend of ten per cent, declared at that time? A. I have.

Q. What is the date of the circular? A. The circular letter to the stockholders is dated January 19, 1912. 4554

Mr. Machen: The circular letter is in evidence. I don't think the power of attorney is, but the circular is.

Mr. Boles: I offer in evidence the power of attorney which accompanied the circular letter in question, which circular is in evidence as Government Exhibit No. 25.

Marked **Lehigh Valley Railroad Company Exhibit No. 31.**

4555

Q. Page 73 in the petition of this case says that the purpose of the Lehigh Valley Railroad Company and those who control it, in the organization of Lehigh Valley Coal Sales Company was to use the latter as a mere instrumentality for retaining under their protection and for their private monopoly which they had acquired by the sale of anthracite coal from the mines tributary to the Lehigh Valley Railroad, is that true?

Mr. Machen: Objected to as calling for the witness' opinion on a question of law and as to a matter as to which he is not shown to be qualified. 4556

A. No.

Recess Taken Until 2 o'clock P. M.

4557 AFTERNOON SESSION, 2 P. M.

D. G. Baird (resumes the stand).

Mr. Howland: It is agreed that the document offered in evidence as defendant **Girard Trust Company's Exhibit No. 1**, purporting to be a copy of the General Consolidated Mortgage of the Lehigh Valley Railroad Company to the Girard Trust Company, as Trustee, dated September 30, 1903, having been filed with the Girard Trust
4558 Company's answer in this suit shall not be copied or printed with the other exhibits offered in evidence before the Examiner, but that any party to this case shall be at liberty to refer to the printed copy of such mortgage filed with the said answer, with the same effect as if the same were copied and printed with the exhibits filed with the Examiner, the Examiner noting in place of said exhibit a memorandum that it has been printed with the petition. The same agreement shall apply
4559 also to the paper offered in evidence as defendant **Girard Trust Company's Exhibit No. 2**, purporting to be a copy of the Collateral Trust Agreement between Lehigh Valley Railroad Company and Girard Trust Company, as Trustee, dated November 1, 1905.

Counsel for the Government admits that the copies above referred to of the General Consolidated Mortgage and the Collateral Trust Agreement, may be received in evidence in this suit with the same effect as though the originals had
4560 been duly produced and proved.

Direct Examination by Mr. Howland:

Q. Mr. Baird, referring to the general consolidated mortgage of the Lehigh Valley Railroad Company, the purpose of this mortgage as expressed by its terms appears to be to secure bonds of the Railroad Company to be issued under the mortgage, and I want to ask you whether you know the number of bonds that have been

certified by the trustee and delivered to the Railroad 4561
Company? A. I do.

Q. What is the face amount of such bonds? A. $36,639,000.

Q. All of these bonds have been fully executed by the Railroad Company and have been certified by the Trustee? A. They have.

Q. Now, of those bonds how many has the Railroad Company actually sold and delivered, I mean in face amount? A. I want to amend my previous answer. The total amount of bonds that have been executed by the 4562
railroad company and delivered by the trustee are $49,639,000; there are to-day in the hands of the public $36,639,000; and $13,000,000 in the treasury.

Mr. Machen: In the treasury of the Railroad Company?

The Witness: Of the Railroad Company.

Mr. Machen: Which have been certified by the trustee?

The Witness: I have so stated.

4563

Q. Now, as to these bonds that are in the treasury of the railroad company, does anything remain to be done by the trustee to make those bonds valid obligations of the railroad company secured by the general consolidated mortgage? A. Nothing whatever.

Q. Can you tell me approximately the number of individuals holding these $36,639,000 face amount of general consolidated bonds that are outstanding in the hands of the public? A. The approximate holders of these bonds is 3,026.

Q. That means 3,026 different individuals and con- 4564
cerns? A. Yes, sir.

Mr. Machen: On what do you base that?

The Witness: I have made a calculation, an account.

Q. Turning now to the so-called collateral trust agreement, dated November 1, 1905, the purpose of that agreement seems to have been, generally speaking, to secure payment of certain bonds issuable under the terms of the

4565 agreement. Can you tell me how many bonds, face amount, were certified by the trustee and delivered to the railroad company under the terms of that collateral trust agreement? A. Yes, sir, I can; $19,000,000.

Q. $19,000,000? A. Yes, sir.

Q. Those bonds were serial bonds, were they, maturing at different times? A. They were.

Q. And of those $19,000,000 face amount, can you tell me how many bonds, in face amount, have been paid by the railroad company and cancelled? A. Seven million.

4566 Q. So that there are now outstanding, so far as the trustee is concerned, how many? A. $12,000,000.

Q. Now, of those $12,000,000 can you tell me whether any are held in the treasury of the railroad company? A. The Lehigh Valley Railroad Company holds, of those bonds, $1,261,000, in its treasury.

Q. And there are outstanding in the hands of the public, how many? A. $10,739,000.

Q. Can you tell me approximately the number of different individuals or concerns which hold these $10,739,000 face amount of collateral trust bonds? A. The ap-

4567 proximate number of holders of those bonds is 512.

Q. Now, with respect to the general consolidated mortgage bonds, and the collateral trust bond, when the railroad company parted with possession of those bonds, it received value in return? A. It did.

Q. How were they issued? I mean, without stating terms, were they issued for property or were they issued for cash? A. Cash.

Q. The railroad company sold the bonds? A. Sold the bonds except as to certain of the collateral trust bonds;

4568 there are a certain portion of those that were given for property.

Q. None of the bonds were given away? A. Oh, no; they got value received.

Q. Do you know whether the general consolidated mortgage bonds are legal investments for savings banks and trustees in any State?

Mr. Machen: I object to it as irrelevant.

Mr. Howland: I asked him whether he knows.

The Witness: I have been advised that they are a 4569
a legal investment in certain States.

Q. You don't know off-hand in what States? A. No, I can not tell off-hand just what States they are legal investments in.

Mr. Machen: I object to that answer as hearsay, as well as for other reasons.

Cross-Examination by Mr. Machen:

Q. These collateral trust bonds were issued, were they 4570
not, to the vendors of the stock of Coxe Brothers & Company, Incorporated, and of the Delaware, Susquehanna & Schuylkill Railroad Company in part payment of the purchase price of those properties? A. Not all of them.

Q. Not all of them? A. No, sir.

Q. How many, do you know? A. I think about twelve million were given to the Coxe family; I am not sure as to that figure just off-hand.

Q. And the balance were sold by the Railroad Com- 4571
pany? A. Yes, sir.

Q. Do you know at what price? A. I cannot remember now.

Q. Less than par? A. I would not like to say. I should say I should think probably they were sold for less than par.

Q. Now, Mr. Baird, did I understand you to say in your direct examination that the Lehigh Valley Railroad Company had never, in its own corporate capacity, acquired any other coal lands than those derived from the Beaver Meadow Railroad Company, and from the Hazelton Coal 4572
or Railroad Company? A. That is my understanding.

Q. I would like to call your attention to the following passage from the Annual Report of the Lehigh Valley Railroad Company for the year 1871, which has been offered in evidence together with other extracts from the Annual Reports, marked Government Exhibit No. 107: "In accordance with the policy heretofore approved, we have continued to acquire interests in coal lands situated in our various regions." A. And the question?

4573 Q. I asked you if that statement is true or incorrect.

Mr. Boles: What is the year of the report?
Mr. Machen: 1871.

The Witness: I suppose it may be said that the statement in the Annual Report in a general way, is correct; in a particular way it is not.

Q. Please explain a little more in detail what you mean. A. I don't think you will find in that year that the railroad company took title or ever took title to any coal
4574 lands.

Q. Do you think that those coal lands were acquired in the name of some subsidiary company? A. I do, or some individual.

Q. In trust for the railroad company? A. I don't say so.

Q. Well, you mean to say that the legal title was not vested in the railroad? A. That is what I mean to say.

Q. Then I call your attention to the following passage from the Annual Report of the Lehigh Valley Railroad
4575 Company for the year ending November 30th, 1872, also included in Government Exhibit No. 107: "Our interests in coal lands have been increased during the year by the purchase of the tract known as the Delano lands, comprising 5,800 acres, situated in Schuylkill County, near Mahanoy City." A. The Lehigh Valley Railroad never owned the Delano lands.

Q. That statement then is incorrect, is it? A. In a particular way it is; in a general way it may be said to be correct.

Q. What do you mean by that? A. I mean, as I stated
4576 before, that the Lehigh Valley Railroad Company never took title to the Delano lands—legal title.

Q. They covered it up by transferring to some individual? A. They transferred to nobody; they took title to nothing there.

Q. They paid the money, didn't they? A. They were the instruments of raising the money, yes.

Q. Was title to these lands taken in the name of any corporation or the name of some individual, and if so, what individual? A. The title to those lands was taken

in the name of the Delano Land Company, a corporation created under a special charter. 4577

Q. Did the Lehigh Valley Railroad Company own the entire capital stock of the Delano Land Company? A. Yes, sir.

Q. From the time of its incorporation? A. Yes, sir.

Q. Well, now, Mr. Baird, are you sure you have that right? Because the passage which I read you is from the Annual Report for the year ending November, 1872, and according to a statement which has been furnished me, the Lehigh Valley Railroad Company first acquired stock in the Delano Land Company in the year 1873. Do you know anything about that? A. Off-hand I cannot answer that question or point out why there should be a difference of a few months there; it is probably accounted for in the bookkeeping. If my memory serves me right, the Delano Land Company was incorporated in 1872. 4578

Q. Then when the annual report for 1872 stated that "Our interests in coal lands have been increased during the year by the purchase of the tract known as the Delano lands," what was meant was that the interest of the railroad company in such lands had been increased by taking the title in the name of the Delano Land Company? A. I would not put it that way at all. 4579

Q. Now, I have stated the facts, haven't I? A. The Lehigh Valley Railroad Company was the owner of the entire capital stock of the Delano Land Company, and the Delano Land Company took title to the lands.

Q. Yes, and that was what was meant by the statement in the annual report? A. I have no doubt that was what was meant.

Q. Now, as to the lands "purchased by us" referred to in the annual report for the year 1871, you don't know whether title to those lands was taken in the name of an individual or in the name of some other corporation? A. No, sir, because I don't know now what they were. 4580

Q. Now, you were asked by Mr. Boles on direct examination as to the domination, or alleged domination, of the Lehigh Valley Railroad Company over subsidiary coal companies. I want to call your attention to the testimony which you gave upon direct examination when

called as a witness for the Government, in which you stated that the directors' qualification shares in the Lehigh Valley Coal Company were transferred to the directors, into the names of the directors or persons about to become directors, the certificates then being endorsed back to the Railroad Company; or, where the stock was pledged or mortgaged, to the trustee of the pledge or mortgage. Did that practice apply as well to other subsidiary companies? A. It did.

Q. Did it apply to Coxe Brothers & Company? A. Yes, sir.

Q. To the Delano Land Company? A. Yes, sir.

Q. To all the coal companies in which the Lehigh Valley Railroad Company was interested through stock ownership? A. All coal or any other company.

Q. Does it apply to the New York and Middle Coal Field Railroad and Coal Company? A. Yes, sir.

Q. How about the Packer Coal Company? Do they transfer some shares to one or two persons to act as representatives? A. We did not control the Packer Coal Company, but such stock as is held by our people in that Board is owned by the Railroad Company.

Q. And the stock is transferred to them, the shares necessary to qualify, transferred to them, and the certificates endorsed back to the Railroad Company? A. Yes, sir. They are endorsed not back to the Railroad Company, but they are endorsed in blank and in possession of the Railroad Company.

Q. That, in every case? A. Yes, in every case.

Mr. Howland: They are in possession except where they are pledged to some other party.

Q. Now, at the meetings of the Lehigh Valley Coal Company and other subsidiary coal companies of the Lehigh Valley Railroad Company, who are present, and how are the meetings conducted? A. The meetings are duly called.

Mr. Boles: I object to the question in that form. The witness is not an officer or stockholder of the Lehigh Valley Coal Company.

Q. Well, how were they conducted when you were such 4585
an officer? A. The meetings were duly called to be held at the stated time at the principal office of the company, at which meetings care was taken to see that a majority or more of the stockholders were present, either in person or by proxy.

Q. By stockholders, you mean the Railroad Company and the directors into whose names shares had been transferred for the purpose of qualifying? A. Not always. I don't, because the Girard Trust Company is the majority stockholder in quite a number of our com- 4586
panies.

Q. Yes, but under the provisions of these mortgages the Girard Trust Company is to give a proxy to such person as the railroad company may designate? A. The Girard Trust Company gives us proxies upon request.

Q. By "giving us proxies" whom do you refer to? A. I refer to the company holding the annual meeting, or, perhaps, the railroad company, the owner, or the company holding the annual meeting.

Q. Yes. But I mean what individual is the proxy given to? A. It is usually given to myself. 4587

Q. The practice has been to give the proxy to the secretary of the railroad company, has that been the case? A. That has been the practice for some years.

Q. Does the secretary of the railroad company also receive proxies from the various directors of the coal companies? A. Sometimes, but not always.

Q. Sometimes they are present in person? A. Sometimes they are.

Q. Now, you testified that the Beaver Meadow Lands were leased to the Cross Creek Coal Company, now Coxe 4588
Brothers & Company, Inc. Were the whole of the Beaver Meadow lands so leased? A. To the best of my recollection, yes.

Q. Did you say that there was only one lease to your knowledge of coal lands which bound the lessee, or purported to bind the lessee, to ship his or its coal over the Lehigh Valley Railroad Company or in such way as to give the Lehigh Valley Railroad a long haul? A. That is the only one I found.

4589 Q. The one you referred to is the lease from the New York and Middle Coal Field Railroad and Coal Company, and other companies to the Midvalley Coal Company? A. That is the one.

Q. That is the lease dated September in 1889, isn't it? A. There or thereabouts.

Q. Now, you said that the New York & Middle Coal Field Railroad and Coal Company had leased out all of its coal lands? A. Yes, sir.

Q. You said also it had leased them to independent
4590 operators. Now, isn't it a fact that this lease to the Midvalley Coal Company is one of the leases which you had in mind by the New York and Middle Coal Field Railroad and Coal Company? A. Yes, sir.

Q. And isn't the only other one in existence a lease to the Lehigh Valley Coal Company? A. It does lease part of its lands to the Lehigh Valley Coal Company, one tract.

Q. All of its lands are leased either to the Midvalley Coal Company or the Lehigh Valley Coal Company? A. That is right.

4591 Q. And this lease to the Midvalley Coal Company dated July 1st, 1889, contains a clause set out in full in Government Exhibit No. 102, reciting that the lessors, that is to say the New York and Middle Coal Field Railroad and Coal Company and the Coal Ridge Improvement & Coal Company, and the Packer Coal Company, are under contract to ship the product of the lands covered by this agreement over the lines of the Lehigh Valley Railroad, and that the said lessee, that is, the Midvalley Coal Company, assumes the obligations of such
4592 contract, and covenants and agrees that all coal mined upon the premises shall be shipped and transported via and over the railroad of the Lehigh Valley Railroad Company. That is correct, isn't it? A. I believe the quotation from the lease that you have read to be correct, although I know of no contract that these companies were under to ship coal anywhere.

Q. No written contracts, you mean? A. Written or otherwise.

Q. Won't you tell us by whom this lease was executed on behalf of the [illegible]? I mean by what

individuals it was signed? A. This is the lease dated 4593
July 1st, 1889, between the New York and Middle Coal Field Railroad and Coal Company, of the first part, the Coal Ridge Improvement & Coal Company of the second part, the Packer Coal Company of the third part, and the Midvalley Coal Company of the fourth part. It was executed by the New York and Middle Company by Israel W. Morris, President, and William C. Alderson, Secretary; by the Coal Ridge Improvement & Coal Company by Israel W. Morris, President; John R. Fanshawe, Secretary; Packer Coal Company, by E. P. Wilbur, Presi- 4594
dent, R. M. Gummere, Secretary; Midvalley Coal Company, by E. B. Leisering, President, George H. Myers, Secretary.

Q. And that, you say, is the only lease of coal lands to your knowledge, which contained a covenant purporting to bind the lessee to ship over the Lehigh Valley Railroad. A. That is the only one I can recall now.

Q. Are you familiar with the lease of the Wyoming Valley Coal Company to Simpson & Watkins? A. No, sir.

Q. Covering the Harry E. Colliery? A. No, sir. 4595

Q. Or the lease from the Lehigh Valley Coal Company to the Babylon Coal Company? A. No, sir.

Q. Dated January 1st, 1890? A. No, sir.

Q. Or the lease from the Lehigh Valley Coal Company to the Austin Coal Company, dated February 23rd, 1891? A. I merely know there was such a lease, but I cannot recall——

Q. (Interrupting) Then you have not made any investigation to ascertain whether there were any leases which contained these covenants to ship over the Lehigh 4596
Valley? A. I cannot recall to-day.

Q. You have attested most of the mining leases, haven't you? A. I don't know whether I did or not; I can't tell.

Q. You have attested a good many? A. I have attested some; I cannot tell how many.

Q. They were kept in your office so long as you were Secretary of the Lehigh Valley Coal Company? A. Yes, sir.

4597 Q. Are you familiar with the lease from the Lehigh Valley Coal Company to Willard & Stevens, dated January 28th, 1889? A. To whom?

Q. To Willard & Stevens? A. No, off-hand, I am not.

Q. You don't know whether it contains a covenant to ship over the Lehigh Valley Railroad in preference to other roads? A. I don't; I could not say now.

Q. Or the lease from the Lehigh Valley Coal Company to the Midvalley Coal Company dated July 1st, 1905? A. I don't know what that was.

4598 Q. Then you are not familiar with it, and don't know whether it contained a covenant? A. The lease from the Lehigh Valley Coal Company?

Q. To the Midvalley Coal Company, dated July 1st, 1905. A. I don't know of any such lease. There may be such a lease, but I don't know, off-hand.

Q. Or the lease from the Lehigh Valley Coal Company to the Mill Creek Coal Company, dated July 1st, 1901? A. There is such a lease, but I think it is now abrogated.

Q. Or the lease from the Lehigh Valley Coal Company to the Stevens Coal Company dated January 28th, 1909?

4599 A. There was such a lease, but I think it has expired by time limitation or other cause.

Q. Well, the Lehigh Valley Coal Company has acquired stock or property of the Stevens Coal Company since that time ,hasn't it?

Mr. Wheaton: No, I think that has gone to Austin, Mr. Machen.

Mr. Machen: What has become of Stevens?

Mr. Wheaton: He just died a natural death. My recollection is he never had any stock.

4600

The Witness: We purchased the surrender of the lease. The property belonged to the Lehigh Valley Coal Company, if my memory serves me right.

Q. Well, are you familiar with the lease dated August 8, 1889, from the Lehigh Valley Coal Company to William Connell, containing a covenant, "In consideration of lower rental than would otherwise have been exacted, to assume the obligation of the lessor to ship over the Lehigh Valley Railroad"? A. I do not recall it.

Q. Or the lease dated January 1st, 1910, from the 4601
Lehigh Valley Coal Company to M. J. Healey, containing the same covenant and recital? A. I don't know what that lease is.

Mr. Boles: Are those leases in evidence?

Mr. Machen: Yes.

Mr. Boles: They are all in the exhibits, are they?

Mr. Machen: Yes, I think they all are. I may refer to one or two that are not.

4602

Q. You have testified that the lease of July 1st, 1889, from the New York and Middle Coal Field Railroad & Coal Company and others is still in force? A. It is, so far as my knowledge goes.

Q. Isn't it true that in December, 1906, that was modified in certain particulars, but not in respect of the clause binding the lessee to ship exclusively over the Lehigh Valley Railroad Company, and re-affirmed as to all other particulars? A. There may have been a supplemental lease made, or agreement, of some sort.

4603

Q. Were you present at the negotiations which took place in 1901 or thereabouts, between the various railroad companies or railroad coal companies and the independents, which finally culminated in the adoption of the 65% contracts? A. I was not.

Q. Then your only knowledge of what took place at these negotiations, is based upon conversations with the officers of the company, is it? A. I have practically no knowledge about those things.

Q. You referred on direct examination to Mr. Asa Packer. Did he have anything to do with the Packer 4604
Coal Company? A. No, sir.

Q. It was a different Mr. Packer, was it? A. The Packer Coal Company was created long after Judge Packer's death. I have no doubt it was named in his honor.

Q. Do you remember the jealousy which the large block of stock held by the Packer estate created among some of the other stockholders of the Lehigh Valley Railroad Company at one time?

4605 Mr. Boles: I object to the question as containing a very, very wrong assumption, whether there was jealousy or not. Ask him if he knows whether there was jealousy.

Mr. Machen: This is cross-examination now, in fact, as well as in substance.

The Witness: I know of no jealousy.

Q. Do you remember a meeting of the stockholders of the Lehigh Valley Railroad Company at which a resolu-
4606 tion was offered reciting that the ownership by the trustees of the Packer Estate of so large a block of Lehigh Valley stock was detrimental to the best interests of the Lehigh Valley Railroad Company? A. I do.

Q. That resolution was voted upon and voted down, wasn't it? A. It never was adopted.

Q. Never was adopted. A. It either was not voted on at all or withdrawn.

Q. Does the Lehigh Valley Railroad Company reach the so-called Bernice Coal field? A. It does through a leased line.

4607 Q. Which leased line is that? A. The State Line & Sullivan Railroad.

Q. That is one of the companies the ownership of which you testified to this morning, isn't it? A. I mentioned it this morning in my testimony.

Q. You leased it for how long? A. I think it was leased for 99 years. No, 50 years.

Mr. Boles: When does that lease expire?

The Witness: Oh, about, I should only guess, 1930, something, I think.

4608

Q. Is there any other railroad which reaches that field? A. Yes, sir.

Q. Which? A. The Williamsport & North Branch Railroad.

Q. That does not run into the field, does it? A. It does.

Mr. Machen: That is all.

Re-Direct Examination by Mr. Boles: 4609

Q. Mr. Baird, there have been no coal lands acquired directly or indirectly, whether it is through a beneficial arrangement or through taking title in the name of an outside party, or through some individual in the interest of the railroad, in any way, since 1874, have there? A. No, sir.

Q. The lease of the State Line & Sullivan Railroad Company was to the Pennsylvania & New York Canal & Railroad Company, was it not? A. Yes, sir.

Q. And for what period? 50 years. 4610

Q. What properties did the State Line & Sullivan Railroad Company own at the time of the lease, other than its railroad? A. It owned a large body of coal lands.

Q. What became of them? A. The State Line & Sullivan operated its coal lands and shipped coal for quite a number of years, and finally sold out their coal mines to some one else.

Q. Are the coal lands expressly excluded from the lease? A. They are. 4611

Q. Was there any covenant to ship the product of the mines over the Lehigh Valley Railroad? A. I am not sure, but I think there was a covenant in the lease that a certain tonnage should be shipped over the leased premises.

Q. Do you know whether for a certain period the merchandise traffic, and by merchandise I mean everything except the anthracite traffic, of the Lehigh Valley, was handled over its rails on contract with third parties. A. From the beginning of the operations in 1855, from the records we have, the company paid very little or no at- 4612
tention to other than the shipment of anthracite coal; it did no freight transportation business, and for a long term of years the freight was handled by third parties on a mileage basis, they furnishing the cars, the railroad company furnishing engines.

Mr. Machen: That was prior to your connection with the company, of course, long prior?

The Witness: Yes, and no.

4613 Q. I was going to ask you next how long that arrangement continued. A. Down as late as 1893 the Lehigh Valley Railroad purchased the remaining equipment owned by what was then called the Lehigh Valley Freight Company, which owned a lot of rolling stock; by that I mean freight cars.

Q. Who were the stockholders of the Lehigh Valley Freight Company? A. I don't know.

Q. It was not the Lehigh Valley Railroad? A. Not the Lehigh Valley Railroad.

4614 Q. You are still secretary of the New York and Middle Coal Field Railroad and Coal Co.? A. Yes, sir.

Q. Are you secretary of any other coal company? A. I think I am secretary of the Wyoming Valley Coal Company.

Q. You have in your custody therefore, the contracts of the New York & Middle Company? A. Yes, sir.

Q. You have in your custody the contracts of the Lehigh Valley Railroad Company? A. Oh, yes.

Q. And of the Wyoming Company? A. Yes, sir.

4615 Q. Did you at my request make a search of your files to ascertain whether there were any covenants in contracts for the lease of anthracite coal, obliging the lessee to ship over the Lehigh Valley Railroad? A. I did.

Q. And what was the result of the search? A. I found one mining lease, the one that has been discussed here this morning.

Q. The Midvalley? A. The Midvalley lease.

Mr. Machen: But you did not look at the lease from the Wyoming Valley Coal Company to Simpson & Watkins?

4616 The Witness: I do not recall now that I did.

Q. What is the difference between the Wyoming Valley Coal Company and the Wyoming Coal & Land Company? A. Considerable.

Q. Then the Wyoming Valley Coal Company's lease is not in your possession? A. It is not.

Q. And that is the reason you did not find it? A. That is one reason.

Mr. Machen: You say you were secretary of the Wyoming Valley Coal Company. 4617

The Witness: Well, I am, but that lease is held by the Lehigh Valley Coal Company in its files. That is one reason I did not see it.

Q. You spoke about having no knowledge about the 65 per cent. contracts. If there was an obligation upon any contractor under the 65 per cent. contracts, to ship over the Lehigh Valley Railroad, which was considered by the railroad company, for any reason whatever, a binding covenant, it would be within your knowledge, wouldn't it? A. I think so. 4618

Q. And have you knowledge of any such covenants? A. I have not.

Re-Direct Examination by Mr. Wheaton:

Q. Do you know whether or not the Midvalley Coal Company paid any attention to this alleged routing clause, shipping clause? A. No, to my knowledge they did not.

Q. They shipped just where they pleased, didn't they? 4619 A. Yes.

Q. And nobody ever said a word to them? A. So far as I know no attention was paid to any such covenant.

Re-Cross Examination by Mr. Machen:

Q. Well, do you know anything about it? A. Why, I am secretary of the New York and Middle still, and have been secretary of the Lehigh Valley Coal Company.

Q. But as secretary you don't have anything to do with the shipments which the tenants of the company make, do you? A. None whatever, but the general question of shipment, if it came up as a general question, I would probably know about it, and no general question ever came up about it. 4620

Q. All that you know is that no question ever came up about the matter? A. I never heard it spoken of.

(Witness Excused.)

4621 **Homer A. Dunn**, a witness called on behalf of the Lehigh Valley Railroad Company, being first duly sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. What is your business? A. I am now, and since 1902 have been a public accountant, technically a certified public accountant in New York State, holding a degree from the Board of Regents of the University of the State of New York.

4622 Q. Where is your place of business? A. 30 Broad Street, New York.

Q. And what firm are you connected with? A. I am a member of the firm of Haskins & Sells.

Q. How long have you been familiar with railroad accounting work? A. Since 1884.

Q. Have you had actual railroad experience? A. I had about five years experience prior to 1884 in the transportation, mechanical and traffic departments, and went into the accounting department of the Kansas City, Fort Scott & Memphis Railroad Company on the 2nd day

4623 of January, 1884.

Q. What other railroads have you worked for? A. I worked for the Kansas City, Fort Scott & Memphis, and Kansas City, Wyandotte & Northwestern, during its construction period as secretary and auditor; from there to the Kansas City, Memphis & Birmingham; from there to the Colorado Midland. The Colorado Midland was absorbed by the Atchison, Topeka & Santa Fe, and I landed in the organization of the Atchison, Topeka & Santa Fe Railroad; from there I went to the Central of

4624 Georgia Railway Company and the Ocean Steamship Company of Savannah, at Savannah, Georgia, and was not only in charge of their accounts, but was in charge of the Steamship Company's Port Agencies.

Q. Are you familiar with the various accounts of the Lehigh Valley Railroad Company? A. I have been, yes for—I have been in almost yearly contact with the accounts. No, I have been more than just in contact with the accounts of the Lehigh Valley Railroad Company for the past six or seven years.

Q. Has your firm during that time certified to the 4625
annual reports of the Lehigh Valley Railroad Company? A. It has, and I believe for a longer time. But I believe prior to six or seven years the work was in charge of one of my partners. I was not in contact with it directly.

Q. During the last six or seven years you have been in contact with it? A. I have. I have had supervision of all the work during that length of time. It may be seven or eight years, I am not certain. It is from six to eight years.

4626

Q. Did you prepare under date of February 26, 1914, a report on the historical synopsis of the financial growth of the property of the Lehigh Valley Railroad Company's railroad system to June 30th, 1913? A. I did; not a separate piece of work, but as one section of an examination.

Q. Will you state in a general way the method by which the report was prepared? A. The preparation of this report covered a considerable length of time; it was done in different sections; analyses were made for different purposes. The first work was done for the 4627
period from the organization of the then existing operating companies back to the organization of their antecedents themselves, or their antecedents. That work was later brought down to June 30th, 1911, and in the last examination and supplementary analysis the work was brought down to June 30th, 1913. The purpose of the work was to ascertain the composition of the property investment accounts of the Lehigh Valley Railroad Company itself and of all its subsidiaries, comprehending its entire transportation system, both rail and water lines. 4628

Q. But excludes everything not actually part of the railroad transportation system or of the water lines? A. Yes, sir.

Q. The water lines included are the boat lines on the Great Lakes and the towing lines to New England points and in New York harbor? A. Yes.

Q. Is this a correct copy of that report? A. Without a detailed comparison of that report, and from having looked it over I should say it was; I have no reason to question its being a correct copy.

4629 Q. You may say the copy I now offer is a copy of the transcription as it appears in I. C. C. Docket No. 4914? A. Yes.

Mr. Machen: We have no objection on the ground of authentication.

Mr. Boles: I offer the paper in evidence.

(Marked **Lehigh Valley Railroad Company Exhibit No. 32**).

Q. What were the salient features which you attempted
4630 to bring out in making that report? A. The cash outlay on property or properties; what was paid for in bonds and stock as equivalent to cash outlay; what was charged up in the accounts for discount on the bonds; what was written up in the accounts without any expenditure and what the writings down of the property investment account were, so as to exclude in a final summary or total everything excepting cash or equivalent outlay. In some cases in the earlier days records of antecedent companies were lacking and we had to take as evidence
4631 of cash or equivalent outlay the opening entries of corporations that were formed and which had purchased properties at sheriff's or foreclosure sales. All of these instances are set forth specifically in the report and where such data is accepted and used as cash or equivalent outlay, the amount thereof is stated.

Q. How many assistants did you have actually engaged in the work of compiling the report? A. First and last there were ten. I mean by first and last—I was referring to the different sections in which the work was done, 1908, 1911 and 1913.

4632 Q. And in the aggregate about how much time was consumed? A. There was an aggregate of 740 days' time consumed in the work.

Q. So that the report is as thorough and painstaking as your firm could possibly make it? A. I won't say it was as thorough as could possibly be made, but as thorough as was necessary for the purpose of ascertaining what we wanted to ascertain as to facts. There might have been some more time devoted purely to hair-splitting.

Q. Are you prepared to state that your investigation 4633
thoroughly satisfies you that the results shown are correct? A. It does.

Q. Will you please state the reason for including the Consolidated Real Estate Company in the report? A. It is a title holding instrument of the Lehigh Valley Railroad Company.

Q. Holding what kind of land? A. Well, for example, it holds title to the very large Sayre shop property in the town of Sayre, near the New York and Pennsylvania State line, on the Pennsylvania side. 4634

Q. Is the same thing true of the Pioneer Real Estate Company? A. It is also a title holding instrument of the Lehigh Valley Railroad Company.

Q. And the United Real Estate Company? A. It is in the same position.

Q. None of those companies, however, hold any land commonly called anthracite bearing land? A. I found no evidence in the books of account that they had acquired any coal lands of any kind.

Q. In making up this report you purposely excluded 4635
any properties known as mining properties or which were actually mining properties? A. Not only such companies, but all other companies who were not engaged in the transportation business; or who were not serving the public in some manner connected with the transportation business; in other words, affording transportation facilities.

Q. Will you explain the adjustments which you have made in the accounts by reason of the elimination from the equipment account of the credit of $5,058,827.00, which appeared in the account on November 30th, 1897? 4636
A. In examining the accounts of the Lehigh Valley Railroad, it was found that on November 30th, 1897, there had been written out of the equipment account against profit and loss account $5,058,827.00, and I was unable to find from the records that this was on the basis of anything conclusive in respect of an inventory or otherwise. I also found in following this item that on June 30th, 1903, there was written back into the equipment investment account to the credit of profit and loss account,

4637 $3,500,000, and on examining the inventory on which this entry was made in the books, I found that the inventory called for $879,578.31 more. The adjustment was not made complete according to the equipment inventory by this amount and this inventory appeared to be a conclusive thing, having been subscribed to by the Baldwin Locomotive Works in respect of the motive power, American Car & Foundry Company in respect to the car equipment, and—I don't now recall the name—the inventory of the marine equipment was supervised
4638 or taken by some one who was also outside of the company's organization. So in adjusting the accounts of the company I excluded both the entry on November 30th, 1897, and the one of June 30th, 1903, and made the account conform to the inventory of that date. Extending a little further the adjustment of $879,578.31, that was the amount that the book account was deficient by comparison with the inventory after the exclusion of these entries of November 30th, 1897, and June 30th, 1903.

4639 Q. What did you find the total property investment account to be as of June 30th, 1913? A. The total of the property investment account of all of the system companies which are enumerated in detail on page 1 as the companies comprehended and which total is shown on page 34 was according to the books $173,006,165.87, modified to the one extent of excluding the five million odd and the three and a half million dollars, which entries had been made on November 30th, 1897, and June 30th, 1903, in the equipment account.

4640 Q. In addition to that what amount of additions and betterments have you ascertained were in prior years charged against operating expenses which might have been properly charged to capital account under the accounting regulations of the Interstate Commerce Commission? A. May I ask whether you mean expenses only or operating expenses and income?

Q. Operating expenses and income. A. There is on file in the office of the General Auditor of the Lehigh Valley Railroad Company in Philadelphia a report of the Chief Engineer, Mr. Walter G. Berg, showing that from

1898 to 1902—showing in detail by jobs of work from 4641
1898 to 1902—that there had been charged against operating expenses, additions and betterments in the amount of $4,031,268.60. This report shows also expenditures for extraordinary maintenance, which, however, are not included in this amount of additions and betterments. Examinations were made for the purpose of ascertaining whether or not these additions and betterments charged in these years against operating expenses had been charged to the property investment account, and the result of the examination was to find that no such 4642
charges had been made as to these items; examination further disclosed that additions and betterments to the amount of $1,498,386.78 were charged against the general reserve account, which general reserve account was made up out of charges against both operating expenses in the maintenance division and against income account. The examination also disclosed that additions and betterments to the amount of $4,564,045.12 had been charged directly against income account. Examination also disclosed that the value of increased weight of rails laid in tracks from 1900 to 1909 which had been charged 4643
to operating expenses and which might properly have been charged to the property investment account as additions and betterments, amounted to $940,244.62. Taking the company's experience record of 68.35 per cent. for the value of those things which attach to the relaying of rails—frogs and switches and track fastenings in their percentage relation to the value of increased weight rail —it was computed that the value of such frogs and switches and track fastenings of which there was no detailed record would amount to $642,657.20. That is 4644
all for the additions and betterments.

Q. Does the report of Engineer Berg go into particulars in details as to the expenditures you have referred to? A. As to labor and materials by the jobs. Not in detail of material or the detail of labor, but describes the specific work.

Q. Will you explain the reason for including a portion of the National Storage Company's property as appearing on page 35? A. The Lehigh Valley Railroad Com-

4645 pany has an investment in the National Storage Company, an investment in its stock and advances. It was found on inquiry that a considerable part of the National Storage Company's property is used by the Lehigh Valley Railroad Company, not I believe under any lease, but just by main strength—by right of proprietorship of the company.

Mr. Machen: It owns all of the capital stock?
The Witness: It owns all of the capital stock.

4646 A. (Continuing) Now that property that is used for transportation purposes is set forth on the books of the Storage Company separately from its Storage Warehouse and such property, and on the books of the Railroad Company this property that is used by the Lehigh Valley Railroad Company in the exercise of its function as a common carrier amounts to $3,632,534.02. So I placed that amount in the item of railroad and appurtenances, taking an equal amount out of the investment in stocks and advances, which investment is not a part of
4647 the railroad transportation property.

Q. Do you know what business the National Storage Company is engaged in? A. In a general way, yes.

Q. Will you please state it? A. They are in the general business of warehousing?

Q. What kind of traffic? A. I cannot say at the present time. I did have a few years ago—four or five years ago—a little knowledge of what it was doing in the way of storage business, but that might not apply to-day.

Q. There is no anthracite coal handled? A. No anthracite coal handled. It is principally bulk freight, or
4648 merchandise freight eastbound coming from the West.

Q. What did you find the real estate account to be as of June 30th, 1913?

Mr. Machen: Do you mean by that real estate not devoted to railroad purposes?
Mr. Boles: Yes, devoted to railroad purposes.

Q. (Question read.) A. I found the aggregate of real estate account of the system to be $3,696,646.65, as shown on page 34, and an amount of $91,578.43 was the

amount written up for appreciation, being a net balance 4649
of writings up and writings down, leaving, by deduction, for cash or equivalent outlay on the property $3,605,-068.22, which amount is carried into the final summary on page 36.

Q. Does the real estate account include the property of the Consolidated Real Estate Company and the Pioneer Real Estate Company and the United Real Estate Company? A. This Real Estate account does, excepting the Sayre Shop property appearing separately and clearly in the books of the Consolidated Real Estate 4650
Company. I have treated it here as in the railroad and appurtenances of the railroad company.

Q. Do you know the general nature of the property held by these three real estate companies? A. I cannot say that I do to the extent that would warrant me in undertaking to enter into an explanation of it. I have an impression of the nature and the character of the property and of the reasons why apparently some of it was purchased.

Q. Are you sufficiently familiar with it to state your 4651
reasons? A. Some of it apparently was purchased to secure facilities for the railroad company, larger tracts being bought than needed and leaving the remainder to the real estate company. One who is familiar with railroad affairs knows that those purchases are made to avoid hold-ups in prices or condemnations for small sections.

Q. In other words they are acquisitions for future railroad use. A. Yes, or some of it apparently was in mind for future railroad uses. Some of those properties purchased, that I speak of, have been sold off in part. 4652
The railroad in some instances apparently used what it wanted and sold off the remainder.

Q. What did you find the total property account to aggregate as of June 30th, 1913, the total physical property account reduced to the basis of cash or equivalent outlay? A. $185,461,580.19. That is the whole of the three accounts, railroad and appurtenances, equipment and real estate.

4653 Q. Did the various examinations which you have made lead you to doubt that any of the expenditures actually shown were really made? A. None whatever. None that have been so treated as cash or equivalent outlay.

Q. In other words, your examination was sufficient to show the actual expenditures in respect of each item of expense as shown in your report? A. Made up in the manner shown in detail in this report on examination.

Q. So that on the basis of the examination you have made, would the company in your opinion be justified
4654 in writing up its physical property account to the figures you have mentioned? A. I would go one step further and say in my belief it ought to do it. Its books will not reflect the facts as of June 30th, 1913, until it does so, on the basis of cash or equivalent outlay.

Q. Did you make a report under date of March 16, 1914, on a special examination of the property accounts from 1830 to June 30th, 1913, and of income account from December 1, 1893, to June 30th, 1913, of the various companies embraced in the Lehigh Valley Railroad Company's transportation system? A. I made such a report
4655 on behalf of my firm and signed it with my firm's name.

Q. Was the work done under your charge? A. Directly; yes, sir.

Q. How many assistants did you have employed in this work? A. When I testified previously with regard to the number of assistants I meant to comprehend these two as practically one examination, which they are. The first exhibit which you have introduced, Number 32, is an historical synopsis of the financial growth, made and completed as soon as the data were all gathered that
4656 were required for the purpose and before the one which you are now presenting was completed.

Q. Is this a copy of the report I mentioned (Handing witness paper)? A. Yes, sir.

Q. Are the results therein shown correct in your opinion? A. They are.

Mr. Boles: I offer the report in evidence.

(Marked **Lehigh Valley Railroad Company Exhibit No. 33.**)

Q. Where the letter "R" appears in front of various items, what does that mean? A. It means that in the original copy the lines were in red ink. 4657

Q. Indicating what? A. That these amounts indicated the opposite of the lines in black ink. If the amounts in black ink represented a deficiency, the amounts in red ink represented a surplus.

Q. Will you state in a general way, Mr. Dunn, what that report shows? A. This report, Exhibit No. 33, includes three exhibits and one schedule. The basic exhibits are designated in the report as "B" and "C," the former being the consolidated general balance sheet at the various dates stated from November 30th, 1893, to June 30th, 1913, adjusted as to property investment and divided so as to set forth the amount of capital invested and employed in the transportation system. Subsidiary to that exhibit is a schedule of investments in bonds and stocks and of advances to companies outside of the transportation system at various dates stated in the consolidated general balance sheet. The exhibit "C," also a basic exhibit, is a condensed consolidated summary of income of profit and loss by fiscal periods from December 1, 1893, to June 30, 1913. I say that exhibits "B" and "C" are basic because they form the basis of Exhibit "A." 4658 4659

Q. Have you stated in that report the deficiency of income based on the capital investment at the end of various periods? A. I have.

Q. And assuming the average fair return on the capital invested at 6 per cent., what did you find the total deficiency of the income to be? A. Without including any interest computation upon deficiencies of income as compared with 6 per cent., or the surpluses of income as compared with the 6 per cent. basis of return, the deficiency which arose during this period—for a period of nearly 20 years—from December 1, 1893, to June 30th, 1913, is $336,085. 4660

Q. And what is the sinking fund value of that deficiency as of June 30th, 1913? A. $21,003,043.00.

Q. Computed on what basis? A. Computed at 6 per cent. compounded annually.

4661 Q. Will you explain what you mean by the deficiency of income as therein stated? A. It is the amount that the income from the transportation property falls below an amount arrived at by computing 6 per cent. upon the average amount of capital invested and employed in the transportation system.

Q. And that report covers an ordinary financial cycle of how many years? A. It is nearly 20 years, falling only five months short of 20 years.

Q. The reason for the five months being what? A.
4662 Being the company's custom at that time in respect of its fiscal year; its fiscal year and annual reports were for years ending November 30th, until and including November 30th, 1901. It changed its fiscal year to June 30th, during the period of seven months ending June 30th, 1902, so that that is a seven months' period throughout in this report.

Cross-Examination by Mr. Machen:

Q. Now, Mr. Dunn, won't you explain to me how you
4663 proceeded in determining whether charges should properly be made to capital or to income account, whether an expenditure by the railroad should be properly treated as a capital expense, or as operating expense? A. By examination of the entries in the books.

Q. You simply accepted, and naturally accepted, the purposes as shown in the books for which moneys were expended? A. Not the purposes alone, but the descrip tions. If the purpose had been accepted there would have been no adjustments, the way I look at it.

Q. I do not quite catch the distinction. A. The pur-
4664 pose of the entries would be as the books show to-day, but take the description of the matter that entered into the account, then judgment could be exercised upon whether it was an actual capital expenditure or not.

Q. How could you exercise this judgment? I would like to have clearly in mind just what basis you did go on. A. Well, when entries are made on the books merely writing up the account without any valuation, or even with a valuation, as in some cases, that does not represent outlay.

Q. No, but where an outlay does take place, how do 4665
the books show except by the classification adopted by the company itself, whether the expenditure is properly to be treated as an expense or as a capital charge? A. It does in this case, by subsidiary records that were kept under a rule of authorization of expenditure. Now, those authorizations of expenditure disclose the character and nature and authority for an amount of expenditure, and whether it was an addition or betterment to the property, to be charged against the reserve account, for example, or to be charged against income account for 4666
example.

Q. Did you include the Delaware, Susquehanna & Schuylkill R. R. in your valuation of the Lehigh Valley Railroad system? A. It is included in the consolidation, yes.

Q. In classifying the expenditures as between capital and income, what basis did you adopt; did you adopt the classification as prescribed by the Interstate Commerce Commission and retroactively attempt to apply that from the beginning, or what basis did you adopt? A. The rules of the Interstate Commerce Commission which be- 4667
came effective July 1, 1907, and which have run from that time to June 30th, 1913.

Q. That was what you attempted to follow? A. Yes, that is why we excluded discount on bonds, because prior to July 1, 1907, under the rule of the Interstate Commerce Commission it was proper to charge discount on bonds to the capital account.

Mr. Machen: I would like very much to glance over these before to-morrow morning.

4668

Hearing adjourned to Tuesday, July 21, 1914, at 10 o'clock A. M.

4669 New York, July 21, 1914.

Hearing resumed pursuant to adjournment.

APPEARANCES:

THURLOW M. GORDON, Esq., and ARTHUR W. MACHEN, Esq., on behalf of the Petitioner.

E. H. BOLES, Esq., on behalf of the Lehigh Valley Railroad Co., et al.

EVERETT WARREN, Esq., on behalf of the Lehigh Valley Coal Sales Company.

4670 F. W. WHEATON, Esq., on behalf of the Lehigh Valley Coal Company, et al.

SILAS W. HOWLAND, Esq., on behalf of the Girard Trust Company, as trustee.

* * * * *

Homer A. Dunn, recalled.

Cross-Examination by Mr. Machen:

Q. Mr. Dunn, will you look at the paper which you
4671 have marked as exhibit "B," which is incorporated with the Lehigh Valley Railroad Exhibit No. 33, and name to us the corporations now existing whose property is included in the property investment in the table found on this exhibit? A. They are the corporations that are set forth on the seventh unnumbered page in this report, being the page following the description of exhibits "B" and "C," as follows: Lehigh Valley Railroad Company, Lehigh Valley Railroad Company of New Jersey, The Lehigh Valley Rail Way Company, Pennsylvania & New
4672 York Canal & Railroad Company, The Schuylkill & Lehigh Valley Railroad Company, The Delaware, Susquehanna & Schuylkill Railroad Company, Loyalsock Railroad Company, Easton & Northern Railroad Company, Bay Shore Connecting Railroad Company, Montrose Railroad Company, Lehigh & New York Railroad Company, Lehigh Valley Transportation Company, Consolidated Real Estate Company, Pioneer Real Estate Company, United Real Estate Company.

Q. Now, is all that is necessary to arrive at the figures which you have given on your exhibit "B" to add up the

items on the balance sheets of these various railroad 4673
corporations, showing as of June 30th, 1913, the valuation of their railroad and appurtenances? A. No, sir.

Q. How much difference would there be between a sum arrived at by adding up the items on the balance sheets of these companies and the figures which you have given? A. I cannot give you the amount of the addition, but I can describe what the addition consists of.

Q. Can you give us an approximate idea of the amount? A. At June 30, 1913——

Q. As to the railroad and appurtenances now? A. As 4674
to railroad and appurtenances of June 30th, 1913, about $3,500,000.

Q. That would be the difference between the valuation as per exhibit "B" and the valuation as per the consolidated balance sheets? A. Yes, the valuation as per exhibit "B" would be about $3,500,000 more than the consolidation from the books—from the face of the books.

Q. From the balance sheets shown in their last reports to the Interstate Commerce Commission? A. Yes, sir.

Q. That is as to real estate and appurtenances? A. 4675
Railroad and appurtenances.

Q. How about equipment? Only one of these corporations which had the early equipment is the Lehigh Valley Railroad Company, isn't it? A. And the Lehigh Valley Transportation Company.

Q. Which is a water line? A. Yes, a water line.

Q. What would be the difference between the sum of the—— A. The equipment shown in exhibit "B" at June 30, 1913, is about $7,000,000 more than the total of the equipment according to the books of the several 4676
companies.

Q. How about the real estate? A. The real estate at June 30, 1913, as shown in exhibit "B" is about $91,000, less than the total.

Q. As per the balance sheets? A. Per the books of the several companies.

Q. Now, won't you describe to us what you have included as real estate and what distinction you have made between real estate and railroad and appurten-

4677 ances? A. The real estate which has been carried as such in the separate accounts on the books of the several companies——

Q. Does that include all the real estate owned by the companies or only that devoted to transportation purposes? A. I cannot answer—I cannot say that it is not devoted to transportation purposes. I did not undertake to determine that question whether it was or was not devoted to transportation purposes.

Q. Does it include real estate for coal yards and coal
4678 trestles and so forth? A. It may in some few instances, but not to any considerable extent according to my recollection. I should say that those few instances were not at important points on the line of the road—not what are known as stocking points.

Q. How did you distinguish? A. Coal facilities at such places as Ithaca, Auburn, Wilkes-Barre, which are used possibly for local yards.

Q. Would be included? A. I say some of those. My recollection is that some of those are included in the property of the Real Estate Company.

4679 Q. Why is it that the cash shown under the head of "Current Assets" in your statement for all the companies existing amounts to less than the cash shown in the Lehigh Valley Railroad Company's balance sheet for 1913? A. Because the amount of cash in transit which was not cash immediately in the custody and control of the treasurer, and not subject to verification as such, is included in the item of agents' balances and cash in transit, which is the item next following the item of cash in exhibit "B," whereas in the Company's annual
4680 report the cash in transit is included in the item of cash, which is the first item under working assets.

Q. In the annual reports of the Lehigh Valley Railroad Co. up to and including the year 1910 we find that item on the balance sheet among the assets of between $2,000,000 and $3,000,000 for real estate; does that cover the real estate of the same character as the item of real estate in your table? A. That is one of the real estate accounts carried as such to which I have referred.

Q. So that your item of $3,605,068.22 for real estate 4681
owned on June 30th, 1913, is the same in character as the item of real estate in the general balance sheet of the Lehigh Valley Railroad Company for the year ending June 30, 1909, amounting to $2,762,837.21? A. With that explanation as I stated yesterday, that inasmuch as the investment in the Sayre Shop property, not only in land but all the improvements, were shown separately, it is classified as railroad and appurtenances throughout.

Q. Now, in your income statement which you have marked as Exhibit "C," you have undertaken to revise 4682
the income as I understand it? A. Yes.

Q. You have not given us, however, any table to show how you arrived at these adjustments? A. That would be very extensive to undertake to tabulate; it would have to be tabulated with respect to each year to make it effective.

Q. Have you taken out of operating expenses some expenses which you found—— A. Pardon me just a moment. You will find on a certain page in the text or comments of this report there is shown the effect of the 4693
adjustments on the net corporate income by all the adjustments that were made in the property investment account for accrual of depreciation from the date of the inventory of June 30, 1903, to July 1, 1907, when the Interstate Commerce Commission's depreciation order became effective, for the adjustment of sundry charges against reserve account, making the total adjustment additions to net corporate income in the period from December 1, 1893, to June 30, 1913, of $17,201,882.48, which does not include the net credit to profit and loss account of $3,065,466.03 by elimination 4684
from railroad and appurtenances and from real estate of the excess of amounts written down over amounts written up at mergers or otherwise without contra-entry in the profit and loss account.

Q. These tables, by the way, were prepared by you and filed with the Interstate Commerce Commission in Docket No. 4914, ere they not, the pending inquiry as to the anthracite coal rates? A. Yes.

4685 Q. In your tables you have shown the number of advances by the Railroad Company to the Coal Company—Lehigh Valley Coal Company; do you know what these advances constituted; did they constitute advances to pay freight rates in any case? A. I don't know that that would be quite a proper description of that item in schedule one of exhibit "B." In some of the earlier years,—it was not true in later years, such as 1911, 1912 and 1913, according to my recollection,—but in some of the earlier years there was a current account in process
4686 of constant liquidation which has included in it that item of advances. In other words, you will observe that advances to the Lehigh Valley Coal Company do not appear subsequent to November 30th, 1900. It is the account prior to that to which I refer.

Q. And at that time there was a current account in which the Lehigh Valley Coal Company was debited with amounts due for freight and coal and credited with various payments? A. That is my recollection.

Q. In your statement of the income of the Railroad Company have you included the difference, if any, be-
4687 tween the tolls actually collected by the Railroad Company and the tolls which it would have received if it had collected from all shippers including the Lehigh Valley Coal Company and others the tolls set out in the published tariffs? A. I don't know specifically of any such differences.

Q. You did not look for them? A. I did not look for that.

Q. You did not investigate that question at all? A. I did not.

4688 Q. For instance, to take an illustration—one of the officers of Coxe Brothers & Company testified in the Meeker case, I think, that from 1891 to 1894 or thereabouts, the tolls paid by Coxe Brothers & Company amounted to the public tariff less 35 per cent. Now, you have not included in revising the income account to determine what the Railroad Company had received from its investment, you have not put back that 35 per cent.? A. No; I should say it would not be proper unless it could be shown that the Railroad Company had received it.

Q. What I am getting at is that in point of fact you 4689
did not do it whether it was proper to do so or not? A. No. The earnings were made up on the basis of what was charged by the Railroad Company.

Q. And the same way as to expenditures? You, of course, could not undertake to ascertain the correctness of every expenditure; you simply had to take the books? A. According to the nature and character of the expenditures as shown by the books.

Q. You would have to take whatever was shown by the books? A. And the subsidiary records, as I stated 4690
yesterday, with regard to the authorization of expenditure, which is a system that was pursued by the company.

Q. But your analysis necessarily assumes, for instance, that a fair price was paid for the property. If, for example, the Railroad Company—taking this merely as an illustration—not saying for a moment that such a thing took place—if the Railroad Company bought property from its directors at five times its value you would not have anything about the value of the property, you would have to take the price paid? A. Ex- 4691
actly so. I would be dealing with the actualities.

Q. Now, look at exhibit No. 32 for a minute. We find a number of items written off for depreciation and so forth, by mergers; you simply had to accept this as shown on the books, did you? A. I did not accept it; I excluded that.

Q. You excluded the entries written up for depreciation? A. In order to arrive at the cash or equivalent outlay.

Q. Now, on pages two and three of this exhibit No. 32 4692
we find a statement of the assets of the Beaver Meadow Railroad & Coal Company at the time of the merger under the head of "Real Estate"; you have not intended to include I suppose the coal lands held by this company, or have you? A. I have included just exactly what the books of the Beaver Meadow Railroad & Coal Company showed at the respective dates stated as real estate.

4693 Q. Whether it was coal lands or anything else? A. Yes.

Q. And the same way with the Hazleton Railroad & Coal Company on pages six and seven? A. Yes.

Q. You said you were a member of the firm of Haskins & Sells? A. I did.

Q. How long did you say you have been a member of this firm? A. Including the period that the firm was a corporation I should say from 1902.

Q. Since 1903 I think that firm has been auditing the
4694 accounts of the Lehigh Valley Railroad Company, isn't that correct? A. That is my recollection. I think the certificates in the annual report will show.

Q. Yes. The certificate—I am reading now from the annual report of 1908—is substantially in this form, is it not, addressed to the President of the Railroad Company for the time being? (Reading). "Dear Sir: We have audited the books and accounts of the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company for the fiscal year ended June 30, 1908, and have
4695 verified all cash and security balances by actual count or by comparison with receipts or certificates of depositaries; and

WE HEREBY CERTIFY that the accompanying General Balance Sheets correctly represent the financial condition of the respective Companies on June 30, 1908, and that the statements of Income and Profit and Loss for the fiscal year ended on that date are correct. Haskins & Sells, Certified Public Accountants." A. Yes.

Q. Do you know what rate per cent. the Lehigh Valley
4696 Railroad Company would be earning upon its capital stock according to your revised statement of its income say for the year ending June 30, 1913? A. I do not. I have not directed my mind to the capital stock question.

Q. You have included the water lines in this statement of income of the Railroad, haven't you? A. Yes.

Q. Are they profitable or the reverse, do you remember? A. I do not recall with certainty, but my recollection is that they are not.

Re-Direct Examination by Mr. Boles: 4697

Q. I want to ask you, Mr. Dunn, whether you have figured the percentage which cash represents in the total property investment account on the basis of cash and equivalent outlay which you stated yesterday was 185 millions and odd dollars, and if so, what is the percent represented by cash? A. Of the total of $185,461,580 of the property investment on June 30, 1913, the cash outlay was $151,172,655, which is 81.51 per cent of the total amount.

Q. And what represents the other remaining percentage to make up the total? A. Bonds issued and delivered in payment for property $20,170,800, which is 10.87 per cent of the total; stocks issued and delivered in payment for the property $6,567,810, which is 3.54 per cent of the total; original entries on the books of companies purchasing the properties of other companies where books of account of the purchased properties could not be found, $7,550,315, which is 4.08 per cent of the total. The cash outlay previously given comprehends the adjustment in respect of additions and betterments charged against operating expenses and income, and is based also on the inventory and appraisal of equipment at June 30, 1903, and, therefore, does not include cash outlay on equipment, which has disappeared from the service or has been abandoned for any reason. 4698 4699

By Mr. Machen:

Q. Of the cash outlay how much was derived from the issue of securities and how much from other sources? A. I did not go into the question of where the cash was derived from. 4700

Q. Whether it came from earnings or from issued securities? A. I did not go into that question.

Q. Or whether it was derived by the subsidiary corporations making the investments from the Lehigh Valley Railroad Company or not? A. I did not go into that question beyond the feature in the consolidation of all these companies of eliminating the inter-company accounts. The inter-company accounts are washed out so

4701 that the current assets, if you please, and current liabilities are shown with respect to the consolidated system.

Q. You tried to treat the whole system as if it were owned by one corporation? A. As one legal entity.

Q. How did you do that; how did you eliminate a subsidiary corporation where, for instance, the investment was made by a corporation which at the time was independent and then the railroad company buys a majority of its capital stock and finally the whole of it? A. Im-
4702 mediately it gets into the system the capital stock which the Lehigh Valley Railroad Company holds in that company is washed out in the consolidation and in such consolidation the property of the subsidiary company is stated in there as property investment of the consolidation. The capital stock is also washed out on the asset side. In respect to current accounts, if the Pennsylvania & New York Canal & Railroad Company owes the Lehigh Valley Railroad Company $100,000, for example, there is a liability standing on its books of that amount and a corresponding debit standing on the books
4703 of the Lehigh Valley Railroad Company, and in the consolidation both are dropped out.

Mark E. Thompson, called on behalf of the Lehigh Valley Railroad Company, being first sworn, testified as follows:

Direct Examination by Mr. Boles:

4704 Q. What is your address? A. 500 West 134th Street.

Q. What is your business? A. Chief Draughtsman for C. S. Hammond & Company, map publishers.

Q. What is the business of C. S. Hammond & Company? A. Map publishers.

Q. Did you prepare at my request a map showing the various railroad lines from the anthracite coal regions in Pennsylvania and covering the territory west from New York Harbor and the Hudson River, in a general way to Buffalo and Pittsburg? A. Yes, sir.

Q. And north from Maryland to the Great Lakes? 4705
A. Yes.

Q. Is this a copy of that map? (Showing witness map.) A. Yes, sir.

Q. Does it contain a correct delineation of the lines shown? A. Yes.

Mr. Boles: I offer the map in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 34.**

Cross-Examination by Mr. Machen: 4706

Q. From what information did you prepare this map, Mr. Thompson? A. The United States Geological Survey sheets and the New York and Pennsylvania and New Jersey State Railroad Commissioners' map.

Q. What do you mean by lines of railroad on this map which are in alternate colors, for instance, red and yellow? A. That shows that two different roads run over that section of the railroad covered by that color, that the one in red has trackage rights over the other.

Q. But it does not show the nature of those trackage 4707
rights? A. No, sir.

William J. Wilgus, called on behalf of the Lehigh Valley Railroad Company, being first sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. What is your professional occupation? A. Con- 4708
sulting engineer.

Q. Have you had actual experience in the construction and management of railroad operations? A. I have.

Q. Over what period of time? A. About twenty-nine years, extending from 1885 to the present time.

Q. And during that time, state in a general way, what important railroad work you have been engaged in? A. Starting in the middle west in Minnesota, with the Minnesota Northwestern Railway as rodman and draughtsman, I went through various stages of engineering experience in the construction and maintaining

4709 of that road and its successor now known as the Chicago, Great Western Railway, until about 1890. During that period I had charge of the construction of terminals at Minneapolis, East Minneapolis, St. Joseph, Missouri, Kansas City and Chicago. Later I was in charge for the same company, or, rather, for one of its subsidiary lines, in the extension from St. Joseph, Missouri, to Leavenworth, Kansas. While I was in the west following the period I have just mentioned I was also locating engineer of the Duluth & Iron Range Railroad
4710 and Duluth & Winnipeg Railroad. In 1893 I became engineer of the Rome, Watertown and Ogdensburg division of the New York Central & Hudson River Railroad and was with that company for nearly fifteen years, passing through the stages of resident engineer, chief assistant engineer, chief engineer, also engineer of Maintenance of Way, and finally vice-president. During that period I had not only contact with construction and maintenance matters but also with operation and with questions of economics and finance. Since my connection with that company, which ended in the latter part
4711 of 1907, I have been in private practice as consulting engineer.

Q. Have you made an investigation of the construction and equipment of the Lehigh Valley Railroad Company for the purposes of determining what it would cost to reproduce its transportation system between Jersey City and Buffalo? A. I have.

Q. Will you state in a general way how you began this investigation and tell us the thoroughness with which it was carried on? A. The investigation was originally commenced in the fall of 1911 and extended
4712 into the late spring of 1912, and involved the inventorying and study as to all the elements of cost of the entire Lehigh Valley Railroad system, including its water line. Later in the summer and fall of 1913 a re-valuation was started in order to bring down to date the previous valuation, so that two valuations have been made, one being as of January 1st, 1912, and the other as of January 1st, 1914. Work was done with the aid of various assistants qualified each in his respective field for the purpose of arriving at the cost of reproducing the road

proper. The system was divided into six districts, each in charge of a district engineer of experience in the construction and maintenance of railroads. In addition to these assistants there were experts engaged for such specialties as rolling stock, both locomotives and cars, steamboats, lighters, barges and other floating equipment; also real estate and right of way, also shop machinery and tools and many other less important specialties. These men all reported to me and the results were directed from my office and by me and were there consolidated and placed in typewritten form. 4713

Q. How many men did you have actually engaged in the work under your direction? A. Without having in mind the exact number, I should roughly estimate that the maximum number would approximate 100. 4714

Q. Did you have actual field corps who went over every inch of the land for the purpose of a detailed investigation as to measurements and hidden quantities and character of the existing structures? A. Yes; each district engineer was instructed to walk or ride in some such conveyance as a handcar over every portion of the system under his charge, and he was assisted by one or more field parties equipped with facilities for measuring quantities and observing the condition of the structures. 4715

Q. Were the men engaged in the work highly qualified for their respective duties? A. They were.

Q. State in a general way the qualifications, for instance, of your assistant in charge of the valuation of land and real estate? A. The assistant in charge of the valuation of right of way and real estate, Mr. J. Frank Aldrich, was a man who originally had been educated at the Troy Polytechnic Institute as a Civil Engineer, later entered political life and became a member of Congress, and Commissioner of Public Works in the City of Chicago; afterwards acted as Receiver for a number of banks having to do with real estate problems of various kinds, and then about twelve years ago—ten or twelve years ago—became connected with me in the capacity of right-of-way agent for the New York Central in acquiring right-of-way and real estate for extensions and improvements. Later, after leaving the 4716

4717 New York Central, he was retained by Professor Swain for the valuation of right-of-way and real estate of the New York, New Haven & Hartford Railroad, and subsidiary lines; was also engaged for a similar purpose on the New York Central under Professor Swain and I also utilized him in a number of other cases than the Lehigh Valley's for similar purposes.

Q. What can you say of the qualifications of Mr. G. R. Henderson, who assisted you in the valuation of the rolling stock? A. Mr. G. R. Henderson has been with
4718 a number of railroads in important capacities in the motive power and car department. Also he is well known as the author of a number of books on locomotive operations, and of recent years has been in private consulting practice and is now consulting engineer for the Baldwin Locomotive Company.

Q. Has he done work for the Interstate Commerce Commission with which you are familiar? A. I only know that through his testimony at Washington to the effect that he had made reports for the Government, I believe on boiler inspection.

4719 Q. What of the qualifications of Azel Ames, Junior, who assisted you in the valuation of interlocking and signals? A. Major Ames, who, by the way, is a veteran of the Spanish War—that is his title—upon his graduation from the Massachusetts Institute of Technology, came to me as assistant supervisor of tracks about 1900, and afterwards was promoted through various grades to become the signal engineer of the Electric Zone Improvement of the New York Central. He was also signal engineer of the Boston & Albany Railroad and the Lake
4720 Shore & Michigan Southern Railway. Later he became connected with the Interstate Commerce Commission as one of the Board of Safety Appliances or some other similar title in investigating signal apparatus of various kinds for the protection of train movements, his colleagues having been Professor Cooley and B. B. Adams of the Railroad Gazette. Mr. Ames is still in private practice as a consulting signal engineer.

Q. What of the qualifications of Mr. William H. Harrison, who assisted you in valuing shop machinery and

tools? A. Mr. Harrison is a man of very long experience 4721
in the sale, manufacture and handling of tools and machinery peculiar to railroad operations. He has been engaged in the appraisal of the value of shop machinery and tools in a number of important cases as, for instance, for the State of New Jersey under Charles Hansel.

Q. What of the qualifications of Mr. Stevenson Taylor, who assisted you in valuing floating equipment? A. Mr. Stevenson Taylor is a man of very long experience in the building and operation of floating equip- 4722
ment, his experience having been spread over a great many years and being marked by such products as the sound steamers of the New York, New Haven & Hartford Railroad. He is Vice President of the Quintard Iron Co., and for many years was President of the American Society of Naval Architects and Engineers.

Q. What of the qualifications of Mr. C. M. Ingersoll, who was your general assistant? A. Mr. Ingersoll was for many years Chief Engineer, and also Assistant to the President of the New York, New Haven & Hartford Railroad, and for the past ten years has been Chief 4723
Engineer, and later, Consulting Engineer, for the Bridge Department of the City of New York. He was also one of the Commission appointed by President Taft for reporting upon the feasibility of railroad construction in Alaska.

Q. Were these men, and each of them actually engaged with you in making the valuation to which you have testified, of the Lehigh Valley Railroad? A. Yes, with the exception of Mr. Henderson, who was engaged in the 1914 valuation only. Mr. Waitt, acting in that 4724
capacity in the 1912 valuation, but was unavailable in 1914 for the reason that he was absent in Europe.

Q. What were Mr. Henderson's duties in respect of the valuation of the rolling stock? A. He carefully examined the result of Mr. Waitt's appraisal, and upon finding that Mr. Waitt's theory of procedure had his endorsement he brought the valuation down to date.

Q. What of the qualifications of Mr. Waitt, who made the valuation of the rolling stock of 1912? A. Mr. Waitt

4725 has had many years experience in the construction and maintenance of railroad rolling stock, having been master car builder of the Lake Shore & Michigan Southern Railroad and of other railroads, and afterwards was Superintendent of motive power of the New York Central & Hudson River Railroad. Of late years he has been in private practice as a consulting engineer in matters of that kind. He has been president of many of the technical societies of the country having to do with rolling stock matters.

4726 Q. In making your investigation for the report in question will you please tell us what lines you included and the properties of what companies? A. I included the following properties controlled through ownership of the entire capital stock: Lehigh Valley Railroad Company of New Jersey, Pennsylvania & New York Canal & Railroad Company, Lehigh Valley Rail Way Company, Easton & Northern Railroad Company, Schuylkill & Lehigh Valley Railroad Company, Delaware, Susquehanna & Schuylkill Railroad Company, Loyalsock Railroad Company, Montrose Railroad Company, Lehigh Valley
4727 Transportation Company, the Railroad portion only of the National Storage Company, the United Real Estate Company, Consolidated Real Estate Company and the Pioneer Real Estate Company. Also the Lehigh & New York Railroad Company which is controlled through part ownership of the capital stock and lease.

Q. Will you state the length of the lease? A. It is a long term lease, but I cannot remember the time. Also there should be mentioned the Hayt's Corners, Ovid & Willard Railroad Company, which is leased for a long
4728 term by the Lehigh Valley Railroad. Also the Bay Shore Connecting Railroad Company, one-half of which is owned through stock control and is operated by the Central Railroad of New Jersey for the joint benefit of both companies. Also the Deveaux College property of the Fair Land Realty Company, one-half of which is owned by the Lehigh Valley Railroad Company and one-half by the New York Central.

Q. And you regarded the property of the Lehigh Valley Railroad Company? A. The property of the Lehigh Valley Railroad Company was also included.

Q. What was the theory, or, rather, the basis upon 4729
which you proceeded in making your investigation and report? A. I proceeded upon the theory that the object to be obtained was the ascertainment of the cost of reproducing the Lehigh Valley Railroad system as it exists to-day new.

Q. As a going transportation system? A. As a live, going transportation system; and I also observed the property at the same time so as to ascertain its condition as measured by its net depreciation.

Q. And following that basis or theory did you prepare 4730
elaborate instructions for the guidance of your assistants and various district engineers? A. I did.

Q. And did they make detailed reports to you as to each and every phase of the work as they proceeded? A. They did.

Q. And did you in turn make summaries for the purpose of boiling the reports down? A. I did.

Q. I show you a paper entitled "Copies of pages 14, 15, 16 and 17, report on valuation of Lehigh Valley Railroad as of January 1, 1914, by W. J. Wilgus"; do these pages contain the final summary of the valuation at 4731
which you arrived after the work you have described? A. They do, by two different methods. One showing the result according to the Interstate Commerce Commission classifications and the other according to the territorial divisions and sections into which the system is divided.

Q. And do they carefully and correctly show what they purport to show? A. They do.

Mr. Boles: I offer the pages in evidence as one exhibit. 4732

Marked **Lehigh Valley Railroad Company Exhibit No. 35.**

Q. I show you a pamphlet entitled "Abstract of Report on Appraisal of Lehigh Valley Railroad Company, rearranged from the Engineering Record of May 16th and 30th, 1914." Was this pamphlet prepared under your direction? A. I can hardly say it was prepared under my direction; it is an abstract or copy of articles that

4733 appeared in the Engineering Record and I have looked it over sufficiently to see that the representative of that paper apparently boiled down or abstracted the report correctly.

Q. Is it largely the verbatim language of your own report? A. I could hardly say that, because it is boiled down, but the many extracts taken are verbatim extracts.

Q. Does it contain the various rules and explanations and descriptions of forms which you formulated for the purpose of making the investigation you have described?

4734 A. It gives a general description of the forms and rulings, but does not attempt to reproduce all of them, or even a small portion of them.

Q. It is correct as far as it goes? A. As far as it goes it is a correct description.

Mr. Boles: I offer the abstract in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 36.**

Q. In the conduct of the investigation did you also

4735 endeavor to ascertain the depreciation features of the different structures as well as the appreciation features? A. I did.

Q. And are the figures for the depreciation and appreciation shown on the summary sheets marked Exhibit No. 35? A. They are.

Q. And are they correct? A. They are.

Q. Have you made an examination of the annual reports of the Lehigh Valley Railroad Company from 1856 to 1913 for the purpose of determining the amount of income received by the owners of the Lehigh Valley

4736 Railroad Company during that period? A. I have.

Q. Through what means have the investors in the company received returns on their investments?

A. The means, or as I would express it, the gateways through which the owners of the property have secured realizable returns, are either dividends on stock or interest on bonds and similar obligations.

Q. And what did you find to be the average amount paid on outstanding capital obligations covering the period I have mentioned, that is, from 1856 to 1913? A. The cash returns average 5.4 per cent.

Q. What did it amount to as shown by your investiga- 4737
tions during the fiscal year 1913? A. 6.5 per cent.

Q. Allowing for increment in value of the property from all sources, what has the return amounted to over the life of the company as an average? A. In cash and kind, 5.7 per cent.

Q. And by reason of the expansion of the property, or the growth of the system, during that time, have advantages inured in your opinion to those who have had the use of the company and for which it charged?

Mr. Machen: I object to that. 4738

A. In my judgment the public has reaped advantages by reason of the marked expansion of the property and also a substantial reduction in passenger and freight rates during the period mentioned.

Q. Will you describe in a general way the territorial expansion of the company as you have ascertained it from your investigation? A. The Lehigh Valley Railroad Company under the name of the Delaware, Lehigh, Schuylkill & Susquehanna Railroad Company, was incorporated in 1846, and its name changed to the Lehigh 4739
Valley Railroad Company in 1853. It was not until 1852, however, that the actual final surveys were made and construction started on what is now the Lehigh Valley Railroad from Mauch Chunk to Easton, a distance of 45 miles. This road was opened for service in 1855 and had for its purpose an outlet for the pre-existing collecting coal roads in the Lehigh region known as the Beaver Meadow Railroad & Coal Company and the Hazleton Company, which had been built in the years extending from about 1835 to the date of construction 4740
of the Lehigh Valley Railroad Company for the purpose of carrying coal from the coal regions to slack water navigation in the Lehigh River.

Q. At what point? A. At Mauch Chunk. For about ten years after the opening of that service of the Lehigh Valley Railroad, its system remained stationery, serving its purpose as above described as an outlet for the previously constructed coal roads. In 1864 it had its first enlargement through a merger with the

4741 Beaver Meadow Railroad & Coal Co., and also with another railroad projected up the Lehigh River from the junction with the Beaver Meadow road at Penn Haven to White Haven. This, two years later, was followed by the absorption of the Lehigh & Mahanoy Railroad, which during the periods I have been describing, was extended westerly from a connection with the Beaver Meadow road to Mt. Carmel, which point was reached in 1865. In 1868 the system was further enlarged by an absorption of the Hazleton & Lehigh, Lu-
4742 zerne Railroads. For the next quarter of a century the system was energetically extended easterly to tide-water by means of the Morris Canal in 1871 and a few years later by an extension of its railroad from Easton to Perth Amboy. It was also extended northerly to connections with other rail and water carriers in central New York via a subsidiary line known as the Pennsylvania & New York Canal & Railroad Company to Waverly; also via the Southern Central Railroad to Fair Haven on Lake Ontario.

Q. The latter company is now known under what
4743 name? A. Lehigh & New York Railroad. Also via various lines later reorganized as the Geneva, Ithaca & Sayre Railroad to Geneva and Cayuga in 1873; so that in the mid-seventies the system had grown from its original 45 mile stem from Mauch Chunk to Easton to a railroad for transporting anthracite coal easterly to tide-water and northerly via water and rail outlets to the north and west.

Q. Did your investigation convince you that the original construction and expansion so far as you have
4744 outlined them to this point were made primarily for the distribution of anthracite? A. I should say yes, primarily, as the reports constantly reflected that primary intention, although as the railroad was extended there was mention made of the market for other classes of transportation, especially in the case of some of the roads that penetrated the agricultural regions of New York State.

Q. Did the reports reflect a sufficient amount of earnings from other traffic to have justified the construction on such basis? A. No.

Q. Will you proceed with the description of the ex- 4745
pansion of the company? A. From 1875 for about ten years the mileage of the company remained practically stationary, but in 1885 the company's lines were extended in a small way, as for instance, at Buffalo, where some terminals were built in conjunction with the Buffalo Creek Railroad controlled by the Lehigh Valley Railroad, and later in 1888 the line for reducing the cost of operation between Wilkes-Barre and the Summit; the line known as the mountain cut off.

Q. That is the summit on Wilkes-Barre Mountain? 4746
A. Yes. Next came the Pottsville Branch, the Easton & Northern, the Rochester Branch, and also the extension from Buffalo to Sayre which was completed in 1892. This second period of expansion extended from 1885 to 1900, and during that time not only were these extensions made that I have mentioned, but also the Elmira, Cortland & Northern Railroad was absorbed and extensions to tidewater at Jersey City were completed. Following the year 1900 until the present time there has been very little territorial expansion, the exception be- 4747
ing the building of the Lehigh & Lake Erie Railroad.

Q. At what point? A. At Buffalo, offering the company improved access to its Tifft Farm Terminal.

Q. The Tifft Farm Terminal being on Lake Erie? A. On Lake Erie and Buffalo Creek. Also there was the absorption of the Delaware, Susquehanna & Schuylkill, so that at the present time the system has grown from the original 45 miles to a mileage of a little under 1400.

Q. The main line? A. The main line and branches, 1400 miles.

Q. Did you prepare a diagram showing the growth of 4748
mileage as you have described it? A. I have.

Q. I show you a paper marked "Diagram One, Growth of Mileage"; is that a correct delineation of the matters you have referred to? A. It is, the two colors being shown for the purpose of illustrating the growth of mileage as corporately included in the company's reports, and in green the mileage as actually constructed, including lines that were afterwards incorporated in the company's mergers.

4749 Mr. Boles: I offer that in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 37.**

Q. Will you describe in a general way the increase in the issuance of capital obligations of the system? A. The capital obligations of the system, including both bonds and stock, in 1856, amounted to $2,817,150, and at that time the funded debt amounted to but slightly over one-third of the total capitalization. Until the date of
4750 the absorption of the lines that I have heretofore described, this capitalization remained practically constant, but about the time of the ending of the Civil War the obligations commenced to rapidly increase, by reason of the territorial expansion. Until 1889 there was a fairly constant increase, but after that time there was a sharp uplift during the period of extension to Buffalo, and about the same time the proportion of the funded debt to the total capitalization began to markedly increase.

4751 Q. The issuance of the capital obligations followed directly the territorial expansion you have mentioned? A. Very closely.

Mr. Machen: What do you mean by funded capital and unfunded capital?

The Witness: Unfunded capital consists of the capital stock; funded capital, of the bonds.

Q. I show you a chart marked "Diagram 2, Capital Obligations." Will you explain what the chart is intended to show? A. The chart is intended to show
4752 graphically the growth or increase in capital obligations of the Lehigh Valley system from the date of its commencement in about 1856, which is the earliest date of which I was able to obtain a copy of the Annual Report, down to 1913. The unfunded capital or capital stock is shown in the color blue; the funded capital consisting of bonds, and also floating debt, is shown in yellow; and the combination of both, or total capital obligations, is shown in red.

Q. Does the chart accurately delineate what you have described? A. It does. 4753

Mr. Boles: I offer the chart in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 38.**

Q. Will you describe in a general way the growth of the company's traffic from the beginning to June 30th, 1913? A. From the opening of the line to traffic, or the year following it, 1856, which is the earliest date of which a copy of the Annual Report is extant, to the 4754
present time, there has been a continued general increase in the volume of traffic moved. In the earlier years the anthracite movement was very much in excess of other kinds of traffic, the anthracite tonnage approximating about three-quarters of the total until the middle 80's, after which the other freight commenced to gradually approach the anthracite volume and, finally, about 1898, crossed the line, so that since that date the volume of other trade has been in excess of the anthracite movement.

4755

Q. I show you a chart marked "Diagram 3, Tonnages," and will ask you to explain what that chart is intended to show? A. On this chart is indicated graphically in yellow the tonnage of other freight; in blue the volume of anthracite; and in red the combination of the two.

Mr. Boles: I offer the chart in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 39.**

4756

Q. Will you describe the general relation of the rates as to the different classes of traffic handled by the company over the life of the company? A. From a study of the coal rates as reflected by the Annual Reports, it appears that they rose from the time of the opening of the road from less than 2 cents per ton per mile to approximately 2½ cents per ton per mile during the Civil War; and then gradually declined to somewhat less than ¾ of a cent, in 1894; since which time they have remained practically stationary. The reduction there-

4757 fore has been about 70 per cent. since the time of the Civil War, 1865.

Q. And since 1894 has there been a considerable increase in the cost of handling anthracite coal? A. Well, to answer that question would involve going into the undoubted fact that wages and materials have risen in price, but on the other hand the company has employed more economical devices, so that as to whether or not there has been a marked change in the net cost I could not say off-hand.

4758 Q. The price of labor has risen? A. Yes.

Q. The price of rails has risen? A. I would hardly say that rails have risen, because prior to 1900 they fluctuated sometimes very much above present prices and sometimes very much below present prices.

Q. Has the price of ties increased? A. The price of ties has increased very much.

Q. Has the price of coal cars risen? A. Yes.

Q. Has the price of locomotives? A. Yes, as regards units; but as regards capacity for doing service, there has not been a very marked rise in price.

4759 Q. That is on account of the increased skill with which they have been designed? A. Yes, and their greater capacity for doing work.

Q. The economies have been effected from the inside of the railroad company and not from the outside? A. I should say, yes.

Q. Are you familiar with the increase in railroad taxes? A. In a general way, yes.

Q. Has there been a considerable increase? A. There has been.

4760 Q. Since 1894? A. I should say generally, during the life of railroads there has been a constant increase in the taxes.

Q. What has tended to off-set the effect of a longer haul on earnings in recent years? A. Terminal expenses.

Q. Does the Lehigh Valley Railroad maintain an elaborate terminal for the transshipment of anthracite at Perth Amboy? A. It does.

Q. Will you describe it in a general way? A. In a general way it consists of a receiving yard for receiving

road trains as they enter the terminal, a hump for classi- 4761
fying cars, a classification yard for receiving cars thus classified, a storage pocket plant for unloading coal that is to be held in storage; wharves for the transshipping of coal from cars to bottoms; and recently a new unloading plant on a new pier for the purpose of unloading cars more economically than has heretofore been the case; tracks for local business and industrial tracks.

Q. In your opinion is that a highly developed terminal for the purposes for which it is intended? A. It is.

Q. And a highly efficient one? A. Yes. 4762

Q. Is the reduction in the ton mile rate on anthracite on the Lehigh Valley a noticeable one? A. Yes, sir.

Q. From the history of the company? A. It is.

Q. And what has been the course of the rates on other freight? A. There has also been a marked drop in the cost per ton mile on other freight. It dropped from 3 cents, an average of 3 cents per ton mile in 1867 to about one-half cent in later years; a reduction of over 80 per cent.

Q. What of the passenger rates? A. Passenger rates 4763
per mile have also shown a pronounced drop, including mail and express; they averaged 3.8 cents per passenger mile in 1857, in contrast with 2 cents in recent years; a reduction of nearly 50 per cent.

Q. I show you a chart marked "Diagram Four, Tonnages and Average Revenues per mile," and ask you to describe what that is intended to show? A. This chart is intended to show graphically the conditions I have already described; the fluctuations from year to year from 1856 to 1913 being indicated in varying colors: red representing anthracite coal per net ton mile, 4764
including terminal costs; blue, the fluctuations of the rates, excluding an assumed terminal cost; yellow, the fluctuating passenger, mail and express rates; and green, the fluctuating average distances of anthracite coal haul.

Mr. Boles: I offer the chart in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 40.**

Q. I show you a paper marked "Diagram Five, Financial Results," and ask you to describe what that chart is intended to show? A. Diagram five is intended

4765 to show graphically the fluctuating financial results of the system from 1856 to 1913. The portion shaded blue, indicating operating expenses; yellow, fixed charges; the portion tinted red, dividends; and green, surplus.

Q. During the period you have mentioned, that is from 1857 to 1913, what has been the amount of the gross income from all sources, in total? A. $870,000,000, that is from 1856. Oh, no, pardon me. From 1857 to 1913, $870,444,912.

Q. And what has been the total of operating expenses
4766 and taxes? A. $591,444,886.

Q. I show you a statement marked "Lehigh Valley Railroad System, Financial Results, 1857 to 1913." Does that statement contain the detail of the total amounts you have just stated? A. It does.

Q. And are the matters shown hereon correct? A. They are.

Mr. Boles: I offer the statement in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 41.**

4767

Q. Of the balance, between the two totals you have mentioned, what amount has been appropriated for additions and betterments, other than those absorbed in operating expenses? A. $13,305,117.

Q. Leaving a remainder available for interest charges, dividends and surplus of what amount? A. $265,694,909.

Q. And what have been the disbursements to the holders of the companies' securities? A. On the funded and floating debt there has been paid $152,780,333, and
4768 in dividends on stock $92,297,575; a total of $245,077,908.

Q. Those being payments entirely for interest and dividends? A. Yes.

Q. And those are the amounts reflected on the paper to which you have referred as "Diagram 5, Financial Results?" A. Those are the aggregate of the results shown in Diagram five.

Mr. Boles: I offer diagram five in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 42.**

Q. These disbursements I understand have actually been paid in cash, or its equivalent, for each of the years during the period of your investigation? A. Yes. 4769

Q. And are the details thereof shown on the statement which I hand you, marked "Lehigh Valley Railroad System, Average Capital Obligations Issued and Assumed, and Rates of Return, 1856 to 1913, Inclusive?" A. Yes.

Q. And is that statement correct? A. It is.

Mr. Boles: I offer that statement in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 43.** 4770

Q. Unfunded capital on this Exhibit 43 means the same as you have described before, capital stock? A. Yes.

Q. I show you a paper marked "Diagram Six, Rates of Return on Funded and Unfunded Capital Obligations," and ask you to describe what that diagram is intended to show? A. This diagram is intended to show graphically the rates of return indicated in detail on Exhibit No. 43; the rates paid on the funded capital and floating debt, being shown in yellow and on the unfunded capital or capital stock, in blue. 4771

Mr. Boles: I offer the diagram in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 44.**

Q. What has been the tendency as to the rate of return on bonds and floating debt during the period? A. It has been a decreasing tendency.

Q. From what averages to what? A. From an average of 6.3 per cent. in the 60's to 4.8 per cent. for the past 13 years. The average for the entire 58 years being 5.3 per cent. 4772

Q. And what of the yield on the unfunded obligations or, in other words, the capital stock? A. There has likewise been a gradual, though more irregular drop in the yield on the capital stock from an average of 12.7 in the 60's, to 6.7 per cent. since 1900; the average for the life of the company being 5.6 per cent.

4773 Q. How much has the rate paid on fixed obligations fallen since the Civil War? A. Since the Cival War decade there has been a drop of 24 per cent.

Q. And the rate of return on capital stock? A. During the same period on capital stock, a drop of 47 per cent., as compared with the average rates in the last 13 years.

Q. What can you say of the average yield on all the capital obligations? A. As to comparative rates of return?

4774 Q. Yes. A. In the 60's the average rate on all securities was 11.3 per cent., in contrast with 5.3 per cent. since 1900; a drop of 53 per cent.

Mr. Machen: This table is intended to show the actual return received in the shape of dividends or interest, isn't it, not the——

The Witness: (Interrupting.) Yes, actual cash or equivalent; the average return on all of the securities for the entire 58 years of the company's history has been 5.4 per cent.

4775 Q. I show you a paper marked "Diagram Seven, Rates of Return on Total Capital Obligations," and ask you to describe what that is intended to show? A. That is intended to show graphically the rise and fall during the period mentioned from 1857 to 1913, of the return paid in cash or equivalent on total capital obligations.

Q. The details of which are shown on Exhibit No. 43? A. Yes.

Mr. Boles: I offer the chart in evidence.

4776 Marked **Lehigh Valley Railroad Company Exhibit No. 45.**

Q. What can you say as to the actual percentage of cash value received in respect of capital stock and bonds issued? A. Separately or in the aggregate?

Q. Both. A. The percentage in the case of capital stock was 98.26 per cent., and in the case of bonds or funded debt, 97.94 per cent.

Mr. Machen: What is that?

The Witness: The average for both classes of securities being 98.15 per cent.

Q. If you take into consideration the securities also guaranteed by the Lehigh Valley Railroad Company, what ratio of cash proceeds do you reach? A. If the latter are taken into account the ratio of cash proceeds to the par value of all securities becomes 97.55 per cent. 4777

Q. Considering the nature of the enterprise and the financial and commercial conditions existing during, we will say, the first twenty years of the company's history, what in your opinion would have been a fair return to the investors?

Mr. Machen: That question is objected to as calling for the witness' opinion on a question as to which he is not shown to be qualified. 4778

The Witness: From the study and investigation that I have made of that subject, in my judgment, a minimum fair return for an enterprise of this character may be said to have been 10 per cent. in the period preceding the Civil War; 8 per cent. during the 60's and 7 per cent. during the 70's.

Mr. Machen: What per cent. during the 60's?

The Witness: 8 per cent. during the 60's. 4779

Q. Have you investigated the reports as to the conditions at that time and the different matters that would throw light upon the answer you have given? A. I have.

Q. And, based on your investigation, you make the answer in question? A. I do.

Q. And what are some of the matters which lead you to the conclusion you have mentioned? A. In the period preceding the Civil War, during the earlier stages of the company's history, the current rate on first mortgage obligations was between 9 and 10 per cent., as evidenced by the testimony that appears in the Annual Reports and based upon that knowledge, and considering the untried nature of the enterprise, an average return of 10 per cent. on the total capital obligations including both the stock and the bonds, would seem to be moderate. 4780

Q. As a matter of fact, did the company have many financial vicissitudes during its history? A. It did during the period I have mentioned prior to the Civil War.

4781 It had the utmost difficulty, in fact was unsuccessful, in selling its six per cent. bonds at 65. I made a similar study of the Annual Reports during the 60's, making a study of the prices, realized on first and second mortgage bonds. For instance, the first mortgage six per cent. bonds of the parent company price ranged from 89 to 100, while the Pennsylvania & New York Canal & Railroad Company seven per cent. bonds sold at par. Taking into account a varying risk of stock and bonds, including capital stock which bore the major
4782 risk, and in light of the figures I have just named, it seemed to me that eight per cent. as an average on both classes of securities might be considered fair. In the 60's and 70's, the six per cent. first mortgage bonds of the parent company brought from 95 to 120, while the 7 per cent. second mortgage bonds of the Pennsylvania & New York Canal & Railroad Company sold at 97½. As the latter reflected what might be termed a midway position between the prior liens and the risk taking capital stock, a fair minimum rate for the average of all classes for that period was taken at 7 per cent.

4783 Q. And since that time you have adopted as a fair minimum rate of return what per cent.? A. Since 1890 I have adopted six per cent. I took seven per cent. for the two decades of the 70's and 80's, six per cent. since 1890.

Mr. Machen: Six per cent. average on——

The Witness: (Interrupting.) On both classes of securities.

4784 Q. Have you prepared a statement marked "Lehigh Valley Railroad System, Comparison of Actual and Minimum Fair Returns, 1856 to 1913 Inclusive"? A. I have.

Q. And have you shown thereon the actual rate of return from all sources during the life of the company? A. I have.

Q. To June 30th, 1913? A. Yes.

Q. And the assumed minimum fair rate of return as to which you have just testified? A. I have.

Q. And the actual returns and deficits on the basis of the rates mentioned? A. Yes.

Q. I show you a copy of that statement and ask you 4785
if the results there shown are correct in your opinion? A. They are.

Q. And ask you whether the theory and basis upon which you have made it up are sound and correct, in your opinion? A. In my judgment they are.

Mr. Boles: I offer the statement in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 46.**

Q. I show you a diagram marked "Diagram Eight, 4786
Capital Obligations and Return Above and Below Minimum Fair Percentage," and ask you to describe what that is intended to show? A. Diagram No. 8 is intended to show graphically the amounts paid to the investor in cash and also the amount accruing to the investor not only in cash, but also in the increment in the value of the property above the minimum fair returns that I have already described, such excesses above the minimum fair returns being shown in blue. The diagram also indicates the deficit below the assumed mini- 4787
mum fair returns, both in cash and also including the increment in the value of the property. The increment in the value of the property wherever mentioned, consisting of the growth or return to the holder of the property in kind. This term, in kind, includes such items of value as enhanced value of real estate, additions and betterments plowed into the property and not reflected in the capitalization and other items of value enjoyed by the company not appearing in its capitalization; as for instance, the acquirement of lines of railroad through foreclosure at prices less than their cost. 4788

Q. Does this diagram correctly delineate the matters you have mentioned? A. It does.

Mr. Boles: I offer it in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 47.**

Q. I show you a statement marked "Lehigh Valley Railroad Company, Consolidated General Balance Sheet, Average Fiscal Year 1913, Based on Appraisal of Road and Equipment," and ask you to describe what that is

4789 intended to show? A. That is intended to show the difference, or rather, the growth in the value of the property over and above what is represented by its capital issue, and is made up by substituting on the balance sheets prepared by Haskins & Sells, as exhibited in their report of I believe March 16, 1914, for the value of road and equipment of their balance sheets, the appraised costs as arrived at by me in the manner heretofore explained.

Mr. Boles: I offer the statement in evidence.

4790 Marked **Lehigh Valley Railroad Company Exhibit No. 48.**

Q. If you should deduct an item of depreciation from the appraised values which appear in this statement, what tends to off set that, so far as the security of the stockholders of the Railroad Company are concerned? A. I would call attention to the fact that the company had invested in outside securities in 1913 $28,315,048, which was in excess of the measured net depre-

4791 ciation of the property at that time; these investments in fact, if not in name constituting a reserve fund for that purpose, have been so treated in the preparation of the consolidated balance sheet, Exhibit "48."

Mr. Machen: These outside securities are the stocks and bonds owned by the Lehigh Valley Railroad of companies not included in the transportation system?

The Witness: Yes. They are shown in detail on the next exhibit

Mr. Machen: That has not been filed?

4792 The Witness: No.

Q. Now, I show you a statement marked "Lehigh Valley Railroad System, Investments in Bonds and Stocks, of and Advances to Companies Outside of the Transportation System," and ask you if that is a correct statement of what it purports to show? A. It is, based upon the information contained in Haskins & Sells report of March 16, 1914.

Q. And based upon your own investigation? A. So 4793
far as the correctness of the figures is concerned, I have relied on their report.

Mr. Boles: I offer the statement in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 49.**

Q. I show you a statement marked "Lehigh Valley Railroad System, Miscellaneous Data," and ask you to explain what that statement shows? A. The statement, miscellaneous data, contains comparative information as 4794
to the rate of returns on capital obligations issued and assumed by the Lehigh Valley Railroad, and the portions thereof invested in the railroad property itself, common carrier property. It also shows the rate of return on outside investments for the fiscal year 1913.

Mr. Boles: I offer the statement in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 50.**

Q. Based upon the investigation you have made and 4795
the testimony which you have just given, what do you find the aggregate net deficit to be for the period of over 57 years that has elapsed between 1856 and 1913? That is, the deficit below the assumed minimum fair return which I have described?

Q. Yes; that is, stated in dollars and cents? A. Ignoring the compounding of interest and deficits and surpluses, the net deficit in dollars below the minimum fair return from 1856 to 1913, in cash or equivalent, is $41,985,408. If, however, there should be taken into account 4796
the increment in the value of the property through the return in kind, as I have heretofore described, the adding of an annuity in order to produce the accumulated return in kind to date to the cash return would cause a reduction in the deficit which would then amount to $27,268,144. If, however, it is claimed that the compounding of interest should be taken into account on both surpluses and deficits, the figures would then be changed so that the deficit in cash would be $68,075,367; and taking into account the increment in the value of the property, the deficit would be $13,316,159.

4797 Q. Have you prepared a statement as to the rates received for the transportation of anthracite coal, other freight and passengers from the history of the company showing the anthracite coal rates per net ton mile, other freight per net ton mile, all freight per net ton mile, passengers per mile, passengers including mail and express per mile, and anthracite average miles carried? A. I have, that table being the basis for Diagram No. 4 heretofore described.

4798 Q. I show you a statement marked "Lehigh Valley Railroad System, Rates Received for Anthracite Coal, Other Freight and Passengers," and ask you whether it is a copy of the statement you have referred to? A. It is a part of it.

Q. And is the other part, the statement I now hand you marked "Lehigh Valley Railroad System, Revenue from Road Haul—Anthracite Coal?" A. Yes.

Q. Are these statements correct representations of what they purport to show? A. They are, based upon the Annual Reports of the company.

4799 Mr. Boles: I offer this statement in evidence as one exhibit.

Marked **Lehigh Valley Railroad Company Exhibit No. 51.**

Recess Taken Until Two P. M.

William J. Wilgus, resumes.

Direct Examination by Mr. Boles:

4800 Q. Will you explain somewhat more in detail, Mr. Wilgus, what you mean by the return in kind, as the use of that term may be reflected on Exhibit 46. A. It may very properly be claimed by many that in judging the return on the investment, due consideration should be given to the enhancement in the value of the property through the many agencies that tend in that direction. Additions and betterments paid for through income are usually thought of in this connection, but there are other features of equal or greater weight. A system like the Lehigh Valley, expanding gradually over a term of years through a laudable desire to avoid swelling its

capital burden, will be found to have carried in its ex- 4801
pense account items that properly were chargeable to construction. Interest on money during the period of non-production is one instance of this kind. Other items of this same general character are free transportation of men, tools and material during new construction, and the use of the company's railroad facilities and administrative and executive staffs for similar purposes without charge. Further enhancements of value have resulted from the acquisition of lines sold under foreclosure for less than their actual cost; also various favorable pur- 4802
chases of prepared right of way as in the case of the canal bed from Wilkes-Barre to Sayre, and from the rise in the value of the company's lands. In considering that the increment in value produced from these causes should be construed as additional income, the corrollary must also be accepted that a yield in kind is entitled to a return exactly the same as cash. In other words, a return put back into the property is the equivalent of a cash investment, and therefore entitled to a return similar to that to which the capital otherwise invested is entitled. With this understood, the increase in the 4803
value of the property may be taken as the accumulation of annual increments with interest thereon to the present day. It is not possible to determine for each year just what this increment has been and the nearest approach to the correct amount is to take a constant sum annually, which, with interest, will produce the present day difference in value between the capital obligations and the cost of reproduction.

Mr. Machen: That is what you have done? 4804

The Witness: That is what I have done. I will explain a little farther. With these facts set forth, it seems proper to conclude that the increment in the physical value of the Lehigh Valley Railroad is the result of an annual sum put back into the property with accumulations of return thereon, at what may be termed a minimum fair rate spread over the entire life of the road. The facts to which I refer and what I have just said are based upon a perusal of the Annual Reports which

4805 show that ever since the completion of the road in 1855, or '56, the causes which I have mentioned have been operating, and that interest charges have been paid through income rather than charged to the capital account; additions and betterments have been made and not charged to the capital account; the value of the real estate has been constantly rising; all of which are reflected in the Annual Reports and from a knowledge of the territory through which the railroad runs.

As to the rate of interest to be considered in ascer-
4806 taining the annuity that should be used in arriving at the sinking fund which I will describe later, I adopted the rates of interest which I have already explained, ranging from 10 per cent. in the fifties, 8 per cent. in the sixties, and 7 per cent. in the seventies, and eighties, and 6 per cent. thereafter, as shown in Exhibit No. 48 of the record. The surplus thus made up of the accumulation of over 57 years between 1856 and 1913 was $148,317,635, this sum having been arrived at by substituting for the bookcost of the railroad proper the average result of the appraisal of the property as of January 1st, 1912,
4807 and January 1st, 1914, on the basis of cost of reproduction new. The sum of $255,582, reinvested in the property annually during the period mentioned at the minimum fair rates that I have mentioned, which yields the above quoted accumulated surplus. Adding the annual re-invested annuity of $255,582 to the actual cash disbursed to the investor each year the average rate of return from all sources for the entire life of the company, is shown in detail on Exhibit 46 of the record, so that having added annually this increment to the cash dis-
4808 bursed, you have the total return to the investor in both cash and kind.

Q. The petition in this case on page 14 states as follows: "The transportation of anthracite by railroad," that refers to the Lehigh Valley Railroad Company, "at the rates now and for a long time past in force, has been and is enormously profitable." Is that true? A. In light of my investigation, as I have explained it, I should say not true.

Q. Will you in a general way describe the physical characteristics of the Lehigh Valley Railroad? A.

Starting at Buffalo, the westerly terminus, the company 4809
possesses exceedingly complete and ample terminal facilities in the shape of approximately 500 acres of upland, pierced by canals, serviceable yards and trestles, and other facilities known as the Tifft Farm. It also possesses passenger terminals and ample local freight terminals in the city of Buffalo. It also has trackage rights over the New York Central from Tonawanda, which lies just north of Buffalo, to Suspension Bridge, connecting with lines to the West, the Grand Trunk, Michigan Central and others. These three terminal lay- 4810
outs are connected by means of the Lehigh & Lake Erie Railroad, extending from Tifft Farm to Tifft Farm Junction on the main line, the main stem into Buffalo proper, and a connection from Tonawanda on the New York Central to the main line at Depew, also termed Niagara Junction; thence passing easterly, the line follows through the central part of New York, with grades approximating 21 feet to the mile adverse to east bound traffic, to the first division terminal at Manchester, thence the road continues to Geneva. I am referring now to the main line. It follows the shores of Seneca 4811
Lake into a summit called Alpine, this point being on the watershed between the waters flowing south into the Chesapeake Bay and the waters flowing north into Lake Ontario. Thence the road, which by the way, is double track, descends into the next division point known as Sayre, at which point the large general shops of the system are located. From Sayre south to Wilkes-Barre the road follows the banks of the Susquehanna River, the north branch of the Susquehanna River, with very easy gradients, south-bound with the traffic. At a 4812
point near Wilkes-Barre known as Pittston Junction, the line splits, the passenger traffic following the route which is the old road through the city of Wilkes-Barre, and thence climbs the hill to the water-shed that divides the waters of the Susquehanna and Lehigh Rivers near Gracedale; the other road used exclusively for freight following an easier route along the side of the mountain, with grades of approximately 60 feet to the mile adverse to the traffic to Gracedale Summit; thence the line, which

4813 now has increased in many places to three and four tracks, descends from the watershed that divides the waters of the two rivers, follows the valley of the Lehigh River on descending grades with the traffic to Easton, the mouth of the Lehigh River, and there crosses the Delaware River, and starts again to ascend, the governing gradients being about 22 feet to the mile, to the backbone of the State of New Jersey, at what is known as the Musconetcong Tunnel; thence the line descends to tidewater at Perth Amboy, with a connection to Jersey
4814 City leaving the main line at South Plainfield. The line that I have described is mainly double track, until, as I have explained, it reaches the head waters of the Lehigh, and from there to tidewater a large portion of the route is three and four tracked. The main line is almost entirely ballasted with crushed stone, laid with heavy rails weighing from 90 to 110 pounds to the yard, largely with creosoted ties, of the most modern type, with tie-plates. Bridges are capable of carrying the heaviest modern power, with few exceptions. As re-
4815 gards alignment, this is very favorable, except in following the course of the Susquehanna and the Lehigh Rivers, and also in crossing the divide into the State of New Jersey, where the curvature is very frequent and quite sharp. Taken as a whole, the main line is of modern construction of the best type. As to branches, starting at the Buffalo end, I have already mentioned the Lehigh and Lake Erie, the Depew and Tonawanda branches, which are important sub-main lines. Passing east we have the Rochester branch, which is an important connection with the city of Rochester, together with
4816 an extension of that same line to Honeoye Falls. At Geneva a number of lines radiate, one to Seneca Falls, which has recently been extended to Auburn; and another known as the Naples branch; another known as the Ithaca branch, which is really a duplicate line, passes along the shores of Cayuga Lake to Ithaca, and thence with a very heavy grade climbs out of the level of Cayuga Lake to a connection with the main line at Van Etten Junction. At Ithaca another branch extends along the shores of Cayuga Lake to a connection with

the line I have previously referred to as having been 4817
extended from Seneca Falls, and thence into Auburn. Then there is also the Hayts Corners, Ovid & Willard line, a small, unimportant road that I have previously mentioned. Near Sayre a connection is made with the important Lehigh & New York Railroad, which was formerly known as the Southern Central, extending from Sayre to Lake Ontario. Also in this same vicinity we have the Elmira, Cortland & Northern Railroad, which extends from Elmira crossing the main line near Van Etten Junction, passing through South Ithaca, and 4818
thence extending to Camden, at a point on the Rome, Watertown & Ogdensburg Railroad. Passing south from Sayre, we come to Towanda, where there is a small branch connecting with the Susquehanna & New York Railroad; also there is the Montrose branch extending from Tunkhannock. At Coxton connection is made with a series of lines that serve the coal collecting regions, known as the Wyoming Territory. Also in this same vicinity, at Pittston Junction, which is immediately to the south of Coxton, connection is made with the moun- 4819
tain cut-off that I have already described. Passing south from this point we come to what is known as the Bear Creek branch, which is comparatively unimportant, and thence to the connection with the recently built line to the Lehigh coal regions, known as the Hays Creek line. Then at Penn Haven Junction——

Mr. Machen: (Interrupting.) By "recently built," you mean what?

The Witness: Within the last two years. At Penn 4820
Haven Junction connection is made with the Mahanoy & Hazleton division, which is the collecting territory for anthracite coal in what is known as the Lehigh district, the extreme westerly end of the line being at Mt. Carmel, this being a very large and important division. Then passing south we have a number of industrial spurs, the Easton & Northern Railroad and, I should mention the Lizard Creek branch, also known as the Schuylkill & Lehigh Valley Railroad, which extends

from Lizard Creek Junction to Pottsville and Blackwood. East of the Delaware River there are a number of small branches extending to Pottstown, Flemington, the Musconetcong branch, the Irvington branch, and others. At the tide-water terminals, we have the main line which extends from South Plainfield to Jersey City, with the important National Docks railroad, which skirts the westerly shores of New York Bay, with a number of subsidiary branches. On this group of roads at the tide-water terminal at Jersey City, are located the piers and docks for serving greater New York, also for export via coastwise and foreign steamers, and also many industries. At Perth Amboy I have already explained the terminals in use at that point. I should have mentioned that at Packerton, near Mauch Chunk, the Company has a large intermediate yard; also one at Coxton, for the purpose of storing and classifying cars.

Q. For what purpose? A. For the purpose of storing and classifying cars.

Q. Primarily cars of what traffic? A. Well, at Coxton, for instance, my recollection is that the coal amounts to about 55 per cent., and merchandise about 45 per cent.

Q. And at Packerton? A. At Packerton, I don't remember the proportion of cars moved; used for all kinds of business.

Q. Is there also a branch running from Wilkes-Barre by Harvey's Lake up to Towanda? A. Yes, I neglected to mention what is known as the back road, with heavy grades, which extends from Wilkes-Barre through Bernice, and by means of trackage rights over the Susquehanna & New York, connects with the line to Towanda.

Q. What is the character of the valley of the Lehigh River between Easton and Mauch Chunk? A. Between Easton and Mauch Chunk, and northerly of Mauch Chunk, the valley is narrow, with precipitous sides, occupied by the Lehigh Valley Railroad and by the Central Railroad of New Jersey, and also the Lehigh Canal.

Q. Is there room for any other railroad through that valley in immediate proximity to the existing lines? A. There is not. 4825

Q. Is the system which you have described a well developed transportation system and highly adapted for its present purposes? A. In my judgment it is.

Q. Is it block signalled throughout the main line? A. The main line is block signalled throughout, and portions of the branch lines.

Q. Are you familiar with the geographical conditions of the gathering region along the M. & H. Division? A. I am. 4826

Q. Would you say that the gathering of coal in that region is in the nature of a natural monopoly?

Mr. Machen: I object to that as asking for a question of law?

Mr. Wheaton: You mean physically speaking, don't you, Mr. Boles?

Mr. Boles: Yes, from a——

Mr. Wheaton: (Interrupting.) Physical conditions? 4827

Mr. Boles: From topographical conditions.

Mr. Machen: I renew the objection.

The Witness: I should say from the physical conditions, and from the occupancy of the territory by the roads that are there, that it is a natural monopoly.

Q. Do you know of any place in the United States, based upon your various railroad experiences, that you have described where railroad development is any thicker than it is in the anthracite coal regions? A. I do not know of any. 4828

Q. Is the territory amply served? A. So far as my knowledge goes, yes.

Q. Will you describe a typical condition in respect of the loading and filling of a car of anthracite coal at a breaker? A. The empties are usually brought into the breaker from the nearest main yard of the system, as, for instance, in the Wyoming division, at Coxton. Mine engines take the empties to the breaker, placing them

4829 on storage tracks to await placing later, or placing them at the time on the tail-track of the breaker, as occasion requires. The cars then in most instances, are dropped by gravity from the tail-track to the breaker itself and there the cars are loaded and by gravity, dropped into the out-bound departure yard of that breaker. At that point the coal is inspected. If it passes inspection, it is then ready to be pulled out by the yard engine and taken to the nearest collection point. If, however, it is rejected, it is moved back
4830 again on to the tail-track, dumped into a hopper and again elevated into the breaker so that the coal may again pass through the cleaning processes.

Q. In making your investigation for the purpose of determining the reproduction value of the Lehigh Valley system did you find that many of the tracks immediately under the breaker belonged to the railroad? A. Yes.

Q. Is it physically possible for another railroad to place a track for the purpose of gathering coal from the same breaker? A. There may be instances where it
4831 could be done, but speaking generally, I should say it would be exceedingly difficult, if not impossible.

Q. And that is what you meant when you answered my question about the gathering of coal being, from a geographical sense, a natural monopoly? A. Yes.

Q. Considering the fact that the valley of the Lehigh River between Easton and Mauch Chunk, and even north, is now occupied by the Lehigh Valley, the Jersey Central, the Lehigh Coal & Navigation Company, considering the fact that the anthracite breakers are all at the present time served by existing gathering tracks,
4832 would it in your opinion, be a practicable thing, or would it be prohibitive from a financial standpoint, to construct another railroad from the anthracite regions to tide water?

Mr. Machen: Objected to as calling for an opinion on a matter as to which opinion evidence is not admissible.

The Witness: I assume your question applies to tide water at New York.

Q. To tide water at New York. A. In my judgment 4833
it would be impracticable. When I say impracticable, I speak both from a financial and physical standpoint.

Q. Physically, it is absolutely impossible to parallel the Lehigh Valley down the valley of the Lehigh River? A. Yes.

Q. And there are extensive cliffs and high mountains on either side all the way down as far as what point? A. Well, the cliffs extend practically from White Haven and northerly of White Haven down to Easton.

Q. When you were officially connected with the New 4834
York Central Railroad, did you become familiar with the existence of trestles and sidings along the line of the railroad that were used for the delivery of traffic? A. Yes, sir.

Q. Did the New York Central have many of such trestles and sidings along its line? A. It did.

Q. Was it in the habit of leasing those to dealers at the respective points? A. It was.

Direct Examination by Mr. Warren:

4835

Q. Do you know of any other railroad systems or railroads that furnish like facilities and trestles and storage plants for shippers who have large volumes of commodities to handle? You spoke of the Central, and of your association with it, and of your knowledge during your association with it, of that road furnishing such facilities. Do not all roads generally furnish such facilities? A. Yes.

Q. So that it is not a question of the Central alone, or the Lehigh Valley Railroad alone, or, indeed, the so- 4836
called anthracite roads alone, but the roads generally throughout the country do it, do they not? A. Yes.

Q. Now, did you some time in the late fall or early winter of 1911, make an appraisal of coal handling properties for the Lehigh Valley Railroad and the Lehigh Valley Coal Company? A. Yes, I did, and also for the Coxe Brothers & Company Incorporated.

Mr. Machen: Are you examining Mr. Wilgus as your witness?

Mr. Warren: Yes.

4837 Q. Have you with you a tabulation showing the location of such coal handling properties, appraised by you, a brief description, with the storage capacity, and the results of your appraisement stated in various columns? A. I have. (Handing paper.)

Mr. Warren: We offer it in evidence, and I desire to ask you some questions about it.

(Marked **Lehigh Valley Coal Sales Company's Exhibit No. 3.**)

4838 Q. Tell us briefly, just what you did in making this appraisal? A. With the aid of my assistants I had each of the plants shown upon this exhibit examined in detail, and an estimate made of all of it, cost of reproduction new, also the amount of depreciation thereon, and the net value after having deducted depreciation, also the present estimated value of the land and the total, including land and structures.

Q. Whom did you avail yourself of in determining land values at the various localities? A. East of Buffalo,
4839 I had Mr. J. Frank Aldrich, who was my assistant, in valuing the lands of the Lehigh Valley Railroad for that purpose.

Q. And is he the gentleman of whom you spoke this morning? A. He is the one of whom I spoke this morning. Points west of Buffalo my assistant Mr. Ingersoll secured the local services of real estate men in Chicago, Milwaukee and Superior and St. Paul for that purpose.

Q. Whom did you utilize in ascertaining the description of the various plants? A. The description of the various plants was from observation on the ground and
4840 the records of the owning companies.

Q. The years when they were constructed you were told by somebody, who was it? A. From the records of the company. Also the storage capacity, in gross tons.

Q. Now, in ascertaining the cost of reproduction new, what source did you utilize to ascertain that? A. That inventory was made of the objects on the ground, prices are estimated to apply thereto, except in certain cases as, for instance, the coal handling plant of South Plainfield, which is of a patented character. The Dodge

Coal Storage Company's chief engineer was called in 4841
to advise us as to the cost of reproducing the plant at the present day. In Chicago likewise the local constructors, who had actually built the plants were called in to give their knowledge and advice.

Q. This Dodge Company had built the South Plainfield Plant? A. Yes, sir.

Q. How did you ascertain the cost of reproduction, that is, the price? I assume it covered materials and time for assembling the materials, and constructing the plants. How did you arrive at the figures? A. The 4842
quantities were arrived at by measurement on the ground; the prices were arrived at by my own experience as to what they would be in case of reproduction, aided by the advice and knowledge of those whom I have already mentioned. The time taken to construct the plant was taken into account in determining interest charges, and likewise the overhead expenses of administration were included.

Q. Would you say that this tabulation which I have offered in evidence is a fair statement of the matters which it contains there? A. Yes. 4843

Q. And is an accurate one as to values, both as to cost of reproduction and also as to items under the head of "Depreciation," also item, "Present value of structures," and also item, "Present value of land and structures," and also the item which represents the land value alone? A. In my judgment it is an accurate statement.

Q. Was this completed and submitted in December of 1911? A. It was.

Q. I suppose you cannot tell us any more definitely 4844
than it was some time during that month? A. My report was rendered, as I remember it, on December 26, 1911, and the examinations were made during several weeks or months prior to that time.

Q. And sufficient time was occupied in the work of your own and your associates and your employes to cover the entire matters represented by this tabulation with accuracy, and reasonableness in every way, was it? A. Yes.

4845 Q. Having made the appraisal, did you submit the same to the persons for whom you made it? A. I did.

Q. As of the date of which you have spoken about, December 26? A. Yes.

Cross-Examination by Mr. Machen:

Q. You are the William J. Wilgus who testified as a witness for the Lehigh Valley Railroad Company before the Interstate Commerce Commission in the Meeker case, are you not? A Yes, sir.

4846 Q. Did you also make an affidavit which was filed with the Commerce Court in the appeal by the Lehigh Valley Railroad Company to enjoin or set aside the finding of the Interstate Commerce Commission? A. I think I did sign an affidavit. I don't know in just what Docket it was filed, but I did make an affidavit.

Q. Now, on Exhibit No. 39, Diagram No. 3, won't you explain to me what you mean by the line including trackage and excluding trackage, the blue line? A. The Annual Reports during the period extending from 1888

4847 until 1906, in some instances, gave the tons moved, including the tons moved by foreign roads over the rails of the Lehigh Valley Railroad, and in other instances, they gave the tonnage moved by their own power only; so that I attempted in this diagram to show both; the dotted portions indicating the places where I was obliged to interpolate the tonnages because of the absence of data from the Annual Reports.

Q. Well, where you have failed to indicate whether trackage is included or excluded, is it to be taken as one or the other? A. It is taken as, for instance, I have

4848 marked on the diagram from 1897 to 1913, revenue tonnages. Before that time I have had to assume from the Annual Reports that the tonnage was moved by the locomotives of the company, in other words the company's own traffic; there was nothing in the reports to indicate otherwise.

Q. Where you have not indicated the trackage coal is included, it is to be treated as excluded? A. It is to be treated as excluded.

Q. What is at the present time the rate per ton mile received by the Lehigh Valley Railroad Company for anthracite coal transported over its lines, the average rate per ton per mile? A. For the year 1913? 4849

Q. If you have it for 1913? A. I haven't it for 1913. 1912 is the latest.

Q. Well, give it for 1912? A. .7 cents per mile, or seven mills per mile.

Q. And what was the amount, the average amount received by the Lehigh Valley Railroad for all other freight per ton per mile? A. .0059 cents or 5.9 mills. 4850

Q. This last figure includes, does it, bituminous coal? A. Yes.

Q. And coke? A. Yes.

Q. Bituminous coal and coke are very low classes of freight, are they not? A. Yes, sir.

Q. The lowest class, in fact? A. Well, they are among the low classes, in connection with broken stone and sand.

Q. Coke is about the lowest class of all, isn't it? A. Well, it is one of the low classes; I could not say it is the lowest. 4851

Q. Have you any figures to show the average amount received by the Lehigh Valley Railroad Company for freight per ton per mile, exclusive of coal and coke, both anthracite and bituminous coal? A. No, I have not.

Q. Now, if I read your table correctly it shows that in the year 1870, for example, the Lehigh Valley Railroad Company received an average rate per ton per mile on anthracite coal of 1.98 cents, is that correct? A. That is correct.

Q. And the same year on all other freight 2.43 cents? 4852
A. Yes.

Q. 10 years later, in 1880 the railroad received an average rate of 1.28 cents on anthracite coal per ton per mile, and 1.23 cents on all other freight? A. That is correct.

Q. Including bituminous coal and coke? A. Yes.

Q. In the year 1900, the rate per ton per mile, on anthracite coal was .74 of a cent, and on all other freight .43 of a cent, is that correct? A. That is correct with

4853 this exception; that in that year as well as in previous years as shown on the exhibit back to 1889, it was not possible from the figures shown in the Annual Reports to segregate the anthracite coal from bituminous coal and coke. The result is that the three articles were lumped together, but the bituminous coal and coke was but four per cent. of the total and therefore would not materially affect the figures.

Q. In 1910 the rate was .73 of a cent for anthracite coal and .57 on all other freight? A. Correct.

4854 Q. Since then there has been a drop, or, at least between 1911 and 1912 there was a drop of .03 of a cent on the rate per ton per mile on anthracite coal? A. Yes.

Q. In that period the decision in the Meeker case took effect, did it not? A. I think so, yes.

Q. Can you give us any figures as to the average length of haul on anthracite coal and other freight? A. I can on anthracite coal; I cannot on other freight.

Q. You have not worked it out, or is that because the Annual Reports did not give the data? A. The Annual Reports are quite vague on that point; they are not as

4855 easy to analyze with reference to length of haul as in the case of anthracite coal.

Q. You find that you have both figures given as far back as 1902? A. Yes, sir.

Q. Since 1902 the average length of haul upon coal including both anthracite and bituminous has increased, has it not, that is to say, the right-hand column—the extreme right-hand column—on your Exhibit 51, is the length of haul for the coal, both anthracite and bituminous, is it not? A. It has fluctuated during that period.

4856 For instance, it was 142 miles in 1902, and two years later, in 1904, it was 150 miles, and then it fell off and rose again and still at that time, or rather, in 1912, it was higher than it was 10 years previously.

Q. And for the same period the length of haul upon all freight had tended to decrease? A. Yes; although that has also fluctuated in the earlier portion of the period you mention. At times the length of haul was less than it is at the present day. It was as low as 170 miles in 1906 as compared with 180 miles in 1913.

Q. The right-hand column of Exhibit No. 51 shows 4857
the length of haul for anthracite coal except where you have indicated otherwise? A. That is it.

Q. Within the last 30 years, what changes, if any, have been made in the physical characteristics of the Lehigh Valley Railroad? A. Since 1881 the road has been extended to Buffalo.

Q. And what physical changes have been made in the line or along the line of the road? A. You mean apart from territorial expansion?

Q. Yes. In respect to straightening the alignment, or 4858
in respect to removal of grades and so forth, or increasing the number of tracks. A. Well, since within the last 30 years as regards improvements in grades and also in alignment, a mountain cut-off has been built which obviates the hauling of coal up a very steep grade out of Wilkes-Barre; then there are minor improvements here and there in the grades, although none of moment that I now carry in my mind. In regard to tracks, there have been many stretches of third and fourth tracks built within that period.

Q. Was the entire line double tracked at that time? 4859
A. The main line was double track, with the exception of a piece through Wilkes-Barre.

Q. In 1880? A. Yes, part of that line is still single track that they use for passenger traffic between Wilkes-Barre and Gracedale Summit.

Q. In that period of time has any change taken place in respect to the density of traffic on the Lehigh Valley Railroad? A. Oh, yes, the density of traffic has increased.

Q. Very much? A. Very much. 4860

Q. What effect, if any, should the removal of grades and the elimination of curves, addition of double tracks and increased density of traffic bear upon the economy of operation? A. It is conducive to economy of operation.

Q. In the same period of time what change, if any, has taken place in the average train load? A. The average train load has increased.

4861 Q. And I think you said upon direct examination that the tractive power of the average locomotive has increased since that period? A. Yes.

Q. I did not quite understand what answer you meant to give to Mr. Boles' question, whether this particular economy as you expressed, was an economy from the inside or the outside railroad management. What do you mean by your answer to that question? A. I understood his question to be to this effect: Have these improvements been made because of a desire on the part
4862 of the company to improve its conditions and improve its economy of operation, or was it imposed upon them from outside sources, as for instance, through government regulation or otherwise, and with that understanding I replied that I believed that these improvements have been made from the wishes on the part of the company itself.

Q. In this period of time what change has taken place in the average car loads, particularly average load of coal cars—increased very much? A. Yes.

Q. And the anthracite coal as well as other classes of
4863 coal is coal that is loaded and unloaded mechanically, is it not, at the present time? A. Yes, except that the handling of coal during the winter, for instance, requires manual assistance.

Q. The coal is frozen you mean, or something of that sort? A. Yes.

Q. Has this method of loading and unloading of coal always been in vogue, or has there been a change made within say the last 30 years—any improvements in the method? A. So far as I know the methods now in vogue
4864 are the same as have been in use for the last 30 years with the exception of improvements in the mechanical methods of handling coal.

Q. Won't you describe those improvements? A. Certainly. Until within the last few years at Perth Amboy the coal has been emptied into vessels and also into storage bins by men opening the doors at the bottom and permitting the coal to run by gravity, whereas, of late, an improvement has been devised by which the cars are taken up and dumped sideways without the necessity of handling the doors.

Mr. Boles: That is by the McMyler dumper? 4865
The Witness: That is one way of doing it—the McMyler dumper.

Q. In the same period of time—— A. May I add, I should have mentioned that the handling of coal—what I have said is correct as regards the coal handled in the hopper bottom gondolas; there is a considerable portion of the coal moved by the company, however, to the West that is handled by box cars and that coal is largely, if not entirely handled manually.

Q. Well, you mean by "manually"—— A. Shovelled 4866
out with the aid of some rather ineffective device. It is largely man labor.

Q. That is the coal which is destined to points off the line of the Lehigh Valley Railroad? A. Yes, to the west and to the lake vessels at Buffalo.

Q. Are there modern mechanical appliances at Tifft Farm? A. There is a large trestle which permits drop bottom gondolas to be discharged mechanically, but the box cars are unloaded manually at that trestle.

Q. It is also true, is it not, that the anthracite coal 4867
moves almost entirely in car load lots—I should say entirely in car load lots? A. I should say almost all entirely in car load lots.

Q. Now, won't you describe what change, if any, has been made in the method of handling general merchandise with respect to the loading and unloading? A. Apart from low grade commodities as, for instance, ore and sand and broken stone, very much the same methods prevail except that of recent years the use of power trucks in freight houses and warehouses have somewhat 4868
modified the methods of handling.

Q. Merchandise freight; general merchandise, also to a considerable extent moves in less than car load lots, is that so? A. To a considerable extent.

Q. It also includes perishable freight such as vegetables? A. Yes.

Q. And fruit? A. Yes.

Q. It includes freight which is very easily damaged in transportation, doesn't it? A. Yes.

4869 Q. In the appendix to Exhibit No. 51, second page of the Exhibit, what do you mean by the average terminal charge? A. That was the sum that I assumed in order that I might eliminate, as far as possible, the question that is so often and properly urged against an average rate regardless of number of miles, and for that purpose I took the figure which harmonized with my investigation as to terminal costs on the Lehigh Valley, and after taking that assumed permanent charge I had an amount that would fluctuate with the miles haul.

4870 Q. What do you mean by the two columns, one headed W. J. W., and the other not so headed, the second column running only for 8 or 10 years. A. That W. J. W. applies to the whole subject. In other words I was the authority for both figures. In one figure I put in the earlier years only when the line received freight from the Beaver Meadow Railroad and had no terminal charge; I assumed that that would be free from a Buffalo terminal charge, which the 35 cents does include, so I took the alternative figures of 20 cents where there was but one terminal and 35 where there was a double
4871 terminal charge.

Mr. Boles: Up to the date of the merger?
The Witness: Up to the date of the merger.

Q. And from that time on you have made a fixed and, I may say, an arbitrary allowance for terminal expense of 35 cents a ton? A. Yes, that is it.

Q. You have made no change in that since 1864? A. No, because after that date the Lehigh Valley Railroad Company originated the coal as well as took care of it
4872 at its other terminus.

Q. In the same way your diagram No. 4, Lehigh Valley Railroad Company's Exhibit No. 40, you have a blue line which is marked "Exclusive of terminal allowance"; does that indicate that the difference between the red line and the blue line is the 35 cents which you have deducted in your Exhibit No. 50? A. Twenty cents in the earlier period and 35 cents in the period succeeding 1864. I should add that the difference between them

is not graphically illustrated, the 20 and the 35 cents. 4873
After deducting from total cost the 20 and 35 cents respectively and dividing by the mileage, the result is the average cost per mile, which is illustrated upon the diagram.

Q. Now, on this Diagram No. 4, in Exhibit No. 40, you have not indicated by any line the rate per ton per mile on freight other than anthracite coal? A. No, sir.

Q. You give passengers and anthracite coal? A. Yes.

Q. But do not indicate anything with reference to 4874
merchandise freight? A. No.

Q. Now, referring to the railroad company's Exhibit No. 47, your diagram No. 8, in your estimated deficit below the fair rate of return on investment, you have included the deficit derived from various investments such as investments in mining stocks and water stocks, in stocks of hotel companies, and in other operations disconnected from the transportation, have you not? A. I have included everything that appears in the capitalization of the company, regardless of the purpose for 4875
which that capitalization might have been used.

Q. In other words, you have included the defict which is due, for example, to the failure of the Lehigh Valley Coal Company to pay any dividends throughout its corporate existence? A. Whatever effect that might have on the final return to the holder of the securities of the Lehigh Valley Railroad Company, yes. In other words, this diagram indicates the difference between what the return on value of the securities should have been at the assumed fair rates of return that I have described 4876
and what he did receive.

Mr. Boles: I do not know that you understand Mr. Machen's question. He wants to know whether that in Diagram 8 is larger or smaller because of the fact that the Lehigh Valley Coal Company did not pay any dividends. As I understood you to say on direct examination, your gains and losses here are transportation gains and losses and not outside investments.

4877 The Witness: Everything that applies to the Lehigh Valley Railroad. I had no means of separating the two. In other words, the Lehigh Valley Railroad issued bonds and stock from which they received money which was invested.

By Mr. Boles:

Q. In the railroad? A. Not necessarily the railroad. In everything that the road owned, and for that investment they received certain annual returns. Prior to
4878 Haskins & Sells' investigation, prior to the date—if I remember correctly, in 1894 and 1896—I had no way of segregating returns from the railraod proper and the outside investments.

By Mr. Machen:

Q. Please refer to your Exhibit which is marked Lehigh Valley Railroad Company's Exhibit No. 48: Did I understand you correctly, according to that exhibit, that the Lehigh Valley Railroad Company now has on hand as the result of its operations for 57 years a sur-
4879 plus accumulated during that period of $148,317,635.00, is that correct? A. Yes.

Q. Now, in your exhibit, Lehigh Valley Railroad Company, No. 47, Diagram 8, have you treated this surplus as if it had been distributed among the stockholders of the Lehigh Valley Railroad? A. I have treated it as if the annual amount necessary to make up that sum had been paid to them, that amount being, as I have already explained, $255,582.00 per annum. In other words, that surplus is a sinking fund and is produced by investing
4880 each year during that period of 57 years the sum of $255,582, and granting a return upon what has in return been put back into the property.

Q. You made mention of the rate of interest, or fair return which you thought ought to have been received for investments during a certain period, and in particular, if I remember correctly, you stated that in the decade preceding the Civil War, the current rate of interest on first-class mortgage obligations was between nine and ten per cent., is that correct? A. On Lehigh Valley obligations of that date, yes.

Q. And you arrived at that from a passage in the 4881
annual report of the Lehigh Valley Railroad Company, for the year 1857? A. Yes.

Q. Now, isn't it true that the year 1857 was a very abnormal year, a year in which was one of the greatest panics the country has ever known? A. Just prior to the War was the period,——

Q. But the 1857 in particular was a panic year, was it not? A. I don't remember just as to the precise year.

Q. Your estimate of the reproductive values of the Lehigh Valley Railroad, at what did you estimate the 4882
value of the right of way; how did you arrive at the valuation of the right of way, and on what do you estimate; did you ascertain the value of contiguous realty, or how did you proceed? A. The value of contiguous real estate was ascertained by a thorough examination by the man I have mentioned, Mr. Aldrich, and his assistants. That neighboring or adjacent property being as nearly similar property as it would be possible to obtain, a property that would be similar in nature to the Lehigh Valley's right of way; then to the value of
neighboring land was added that additional sum which 4883
Mr. Aldrich's experience and that of his assistants' and mine led us to believe would represent the additional value of a railroad's right of way as a continuous strip.

Q. In estimating the basic value of contiguous real estate, was account taken of the fact that that real estate in many instances necessarily was enhanced in market value by the proximity to the Lehigh Valley Railroad? A. The facts were taken as they stood, whatever the value was regardless of the causes that made it valuable. 4884

Q. Even though the proximity of the railroad might have been the causes tending to enhance the property? A. That was not taken into account as one of the causes; there might have been many causes.

Q. What was the valuation which you placed upon the right of way, in, where, we will say in rural sections of New Jersey; did you value it by the acre? A. It was valued by the acre where it was open country, ranging from thirty dollars, forty and fifty dollars an acre to

4885 possibly two or three hundred dollars an acre, or, as you approach Jersey City, up to three or four thousand dollars an acre.

Q. I think you testified that about 45 per cent. of the freight traffic of the Lehigh Valley Railroad is coal traffic; did I quote you correctly? A. No; I spoke from recollection to the effect that as I remembered that about 45 per cent. of the cars handled in a yard were merchandise and about 55 per cent. coal.

Q. Do you know what the proportion of the coal
4886 traffic is to the total freight traffic of the railroad? A. You mean as regards to revenue?

Q. No, as regards tonnage—anthracite coal I mean. A. In 1913 anthracite coal was about 45 per cent. of the total tonnage.

Q. What was the proportion of revenue derived from anthracite coal, the total revenue—— A. I have not that information in my figures.

Q. Please look at the Annual Report of the Lehigh Valley Railroad Company for the year ending June 30, 1913, and state if you can, if it appears there, what
4887 were the revenues the railroad received from coal, including the bituminous coal and coke, and also the revenue received from all other freight? A. The transportation of coal and coke produced a revenue of $20,385,389.09, and the merchandise freight $16,339,640.97.

Q. What railroad do you regard as the best line from the anthracite coal fields to tide water? A. I don't believe that I am competent to answer that question for the reason that in order to do so I would have to make a comparative analysis of the characteristics of the
4888 various roads.

Q. How would you compare the Lehigh Valley Railroad in this respect with the Central Railroad of New Jersey—I mean to say in respect to economy of operation, length of haul, alignments, grades and so forth? A. I have made something of an examination of the Central Railroad of New Jersey, and it would be my judgment that they can operate from the Wyoming region to tide water more cheaply than the Lehigh Valley.

Q. How about from the Lehigh region? A. That I am not so well posted on, but I did look into that question—I did make rather a critical examination as regards the Wyoming movement and came to that conclusion. 4889

Q. The Lehigh very closely parallels the Central Railroad of New Jersey from the Wyoming region to tide water, does it? A. I would hardly say closely parallels it except in places. It is quite widely removed, for instance, in one case, in New Jersey, where the Central Railroad of New Jersey passes to the north in an open cut, and the Lehigh Valley Railroad Company over to the south tunnels the mountain; but down the Lehigh River they are parallel. 4890

Q. And there is no difference between the two roads there? A. Not as regards the mere question of road haul, but the terminal conditions are different and their character of traffic is different.

Q. You testified to considerable additions made by the Lehigh Valley Railroad to its mileage during the last 30 years; do you know whether all of these lines were acquired or used to any considerable extent for the transportation of anthracite coal; taking, for instance, the line terminating at Camden, New York, does any considerable quantity of anthracite coal run over that line? A. There is some; I would not call it considerable; there is local consumption and some interchanges with other railroads, but not what I would call a large volume. 4891

Q. You testified that some anthracite coal was shipped to North Fair Haven for lake deliveries; is this in any considerable quantity or not? A. As I carry it in my mind, one or two hundred thousand tons per annum; it may be three hundred thousand tons per annum now. 4892

Q. In diminishing quantities, isn't it? A. No, I think it is holding up there quite well, as I remember it.

Q. Now, what do you mean by saying that the coal business is a natural monopoly?

Mr. Boles: He didn't say that; I object to the question.

Mr. Machen: If he did not say it Mr. Wilgus is fully capable of correcting me.

Mr. Boles: I admit that.

4803 A. What I said was, that the situation, for instance, of the Lehigh region, is such, that in order to serve the collieries properly and without undue expense of duplication of facilities and also taking into consideration the existing ownership of tracks, it is a natural monopoly. More than one railroad operating in the majority of the collieries would be as I view it impracticable.

Q. You said that the tracks on some of the breakers belong to the Lehigh Valley Railroad to some of the collieries; which collieries? A. I do not carry in my
4804 mind, because the conditions were varying in different parts of the region. I would have to look up my record to ascertain where that was.

Q. Were these collieries belonging to the Lehigh Valley Coal Company? A. As I remember some of them to the Lehigh Valley Coal Company, and to Coxe Brothers & Company.

Q. In your estimate of the cost of reproduction of the Lehigh Valley Railroad, have you included the figures which you have set out on the Coal Sales Exhibit No. 3,
4805 the coal pocket and storage plant indicated there as belonging to the Lehigh Valley Railroad? A. Yes, all the plants indicated as belonging to the Lehigh Valley Railroad are included in the valuation of the Lehigh Valley Railroad.

Q. In fact, you have included everything that belonged to the railroad? A. Yes.

Q. What did you figure would be a fair rate of return at the present time? A. I assume for the purpose of this analysis that I have made, a minimum fair return
4806 of 6 per cent.

Q. First class mortgage bonds are not selling for that figure at the present time, are they? A. No, I am taking the average of the risk taking stock, and the non-risk taking bonds.

By Mr. Warren:

Q. Now, Mr. Wilgus, what you have included in the Lehigh Valley Coal Exhibit No. 3 is what appears on the face; that is what you have included, isn't it? A. The Lehigh Valley Coal Sales Company? Yes.

Q. What you have included on our Sales Company Exhibit No. 3, which is called appraisal of coal handling properties, what you have included there are only the things that are there, is that right? A. Yes, sir. 4897

Q. You have not included other properties of the Lehigh Valley Railroad unless they are listed there? A. Not at all.

By Mr. Boles:

Q. The valuations to which you testified in detail this morning, which you made with the corps of assistants you mentioned, were all made since the testimony you gave in the Meeker case before the Interstate Commerce Commission? A. Oh, yes. 4898

Q. And all that you have testified to has no relation in any way to the testimony you gave in the Meeker case? A. None at all.

Q. Except as the result may corroborate the result which you then believed to be correct based upon the short-time examination that you were able to make? A. That is correct.

Q. And haven't the results more than corroborated the figures which you then gave? A. They have. 4899

Q. Turning to Diagram No. 3, which is Exhibit No. 39, are you familiar with the fact that the Delaware, Susquehanna & Schuylkill Railroad had a trackage contract for transporting coal over the Lehigh Valley during a certain period of time? A. Yes, sir.

Q. And the line there, the dotted line in blue, which says, "exclude trackage," that would indicate the exclusion of the tonnage handled in the Delaware, Susquehanna & Schuylkill freight? A. Delaware, Susquehanna & Schuylkill and also the tonnage handled through Wilkes-Barre belonging to other companies. 4900

Q. As to Exhibit No. 51, the more bituminous coal and coke included in the computation which gave you the results shown in column 2, the smaller the per ton mile rate would be? A. Yes.

Q. Referring to that exhibit again, during the last 20 years' period, it indicates in a general way that the anthracite rates have decreased and all other freight

4901 rates increased, does it not? A. During the last 20 years?

Q. Yes. A. So far as the net ton haul analysis is involved, I could hardly answer that question yes or no, for the reason that the other figures fluctuate, so that if you take 1893 and compare it with 1912, there is a decrease in other freights, but if you take 1896 and compare it with 1912, there has been an increase.

Q. Now, take the period from 1896 to 1903, the figures are all 4 plus mills? A. Yes.

4902 Q. Whereas, from 1903 to 1912 the figures are all 5 plus mills? A. 1904 to 1912, they are all 5 plus, yes.

Q. Whereas, turning to the anthracite rates from 1902 to 1912, they range from .73 and .74 mills at the beginning to 7 nothing mills in 1912? A. Yes.

Q. If all the Wyoming region coal were sent north and if all the Lehigh region coal were sent south—by that I mean routed by the shippers north and south—would a large economy in operation be effected for the Lehigh Valley Railroad? A. I am not prepared to answer that off-hand.

4903 Q. All Lehigh region coal going west has to cross the Wilkes-Barre Mountain? A. Yes.

Q. And all the Wyoming region coal that comes east has to cross the Wilkes-Barre Mountain? A. Yes. But, on the other hand, there happens to be a movement of empty cars in there which somewhat facilitates the condition that otherwise would be burdensome.

Q. If the Wyoming coal all went north there would not have to be any empty coal car movement over the mountains? A. No, sir.

4904 Q. Then, eliminating that factor of empty coal car movement, would there not be a considerable economy of operation effected? A. Well, I would want to inquire and think into that a little more than I have done in order to answer that question.

Q. It is cheaper to roll coal cars down a hill than to pull them over a mountain, isn't it? A. Certainly.

Q. And every pound of Lehigh coal that goes west has to go over the Wilkes-Barre Mountain? A. Yes.

Q. Is there a very large volume of traffic that goes that way? A. Quite a large traffic.

Q. And every pound of Wyoming region coal that comes south or east has to go over the Wilkes-Barre Mountain? A. Yes. 4905

Q. Is that a large volume of traffic? A. Quite large.

Q. Is that the volume of traffic to some extent which was involved in the Meeker case? A. Yes.

Q. Is the box car movement by reason of any desire on the part of the railroad company you know of? A. Yes.

Q. What? A. To have a load movement for cars that otherwise would return from the West empty. 4906

Q. And that is all? A. All that I know.

Q. Now, turning to the Lehigh Valley Railroad Exhibit No. 47, which is your Diagram 8, the fact that the Lehigh Valley Railroad Company owned during that time a certain block of stock of the X Company, or the Y Company, or the Z Company and lost no money on it, or gained no money on it, does not change this exhibit one way or the other, does it? A. This exhibit, as I have explained, covers a situation that is chiefly very clear, and that is that it simply takes the capital issue of the railroad, or any securities that it may have assumed and guaranteed, regardless of how the funds may have been used, and has taken that in comparison or conjunction with the returns that have been paid on those securities thus issued. 4907

Q. Now, during that time the Lehigh Valley Railroad owned a large amount of stock of the Lehigh Valley Coal Company, which was placed with the Girard Trust Company, on which the railroad paid nothing and on which the railroad received nothing; that state of facts does not change this exhibit one way or the other, does it? A. No. 4908

Q. Turning to Exhibit No. 48, which is your Statement C, you show a surplus marked "'Accumulation over 57 years' of one hundred and forty-eight million odd dollars." Mr. Machen asked you a question the purport of which he meant to be that that one hundred forty eight million was lying around some place; what does that figure really mean? A. That figure means that an appraisal at the present day shows that it is worth one

4909 hundred and forty-eight millions odd more than it represented by the cash invested in the property through the issued securities. In other words, it is the accumulations due to the various causes I have outlined during that period.

Q. It is an increment in value? A. It is an increment in value.

Q. And represented by an increase of the value of the investment? A. Yes.

Q. And that figure is the figure which represents the
4910 increase in value to the stockholders and bondholders of their investment? A. Yes.

Q. For which they have gotten not one penny back into their pockets? A. Precisely. For instance, if I might qualify that with an illustration; when securities are issued by the Lehigh Valley Railroad Company for its construction, originally that money so raised was expended partially for the purchase of iron rails weighing from 50 to 60 pounds to the yard. As time went on it was found desirable and necessary in fact in the interest of economy and safety to substitute steel rails and also
4911 rails of an ample weight, an increased weight and increased quality; that increased weight and quality was paid for out of income; namely, no securities were issued to pay for them, so that to-day we appraise the property and we find instead of 50 and 60 pound iron rails 100 and 110 pound steel rails; naturally we appraise those rails at their present day value and of the weight we find, and not for their original light weight and less desirable material, and the difference between the value of the two is an increment.

4912 Q. And that is the meaning of this surplus figure? A. Yes.

Q. You have some cases where the proximity of the railroad to real estate had a considerable effect upon the decreasing of its value, haven't you? A. Yes.

Q. And is that generally true throughout all the rural regions? A. It is very often true. For instance, in many parts of the road we found that our present day appraisal of the value of the land is less than the company actually paid for it forty years ago.

Q. The multiple which you added to the basic value in- 4913
cluded in addition to the continuous strip value such items as the contingencies which fall upon the acquirement of property for railroad purposes, such as severance damages and the fact that you have to condemn buildings largely. A. Those are elements in forming continual strip value.

Q. You meant to include all those under the title continuous strip—— A. Precisely, all the expenses which experience has shown is required.

Q. Did your investigation show you there was just as 4914
large a percentage of tracks under breakers, which tracks belonged to the railroad, under breakers owned and controlled by the so-called independent collieries as under those operated by the L. V. Coal Company and Coxe Brothers? A. To answer that I would have to refresh my recollection by going over the records again. I know that there were some explanations here and there and I cannot from recollection state what they were and I would have to look it up.

Q. You did not mean to say to Mr. Machen that the 4915
tracks under the collieries which were owned by the railroad were only those under the collieries of Coxe Brothers and Lehigh Valley Coal Company? A. No.

By Mr. Machen:

Q. What do you mean by the tracks owned by the railroad? Do you mean simply that the rails are owned by the railroad? A. The rails and the ties and the track fastenings.

Q. Subject to any permanent right to retain them in position or simply—— A. As a rule they are just there; 4916
as a rule we are unable to find any agreement.

Q. They are simply there as licensees? A. They are there and how long they may stay there are no records to show.

Q. I want to ask a few questions about this Diagram No. 8, to get that entirely straight, i. e., Exhibit No. 47. Suppose the Lehigh Valley Railroad Company owned, we will say ten million dollars of bonds of the Lehigh Valley Coal Company, and that these bonds paid no

4917 interest; would not the growth of interest which would accrue to the railroad company and indirectly to its stockholders appear in the red area of this Exhibit No. 47? A. I should say with your statement as it is, that they would be reflected in the deficit area.

Q. And in the same way the stock of the Lehigh Valley Coal Company consists of, I think, $1,965,000 par value, and upon this stock no dividends have ever been received, and the failure of the railroad company and, through the railroad company, its stockholders, to re-
4918 ceive any return upon the money invested in that stock, would also add to the red area in your diagram, wouldn't it? A. That would be true if the one million nine hundred and some odd thousand dollars was paid for by money from the sale of the securities. But, if that stock of the Lehigh Valley Coal Company was paid for out of the depreciation fund in effect that has been accumulating to offset depreciation—in other words, surplus earnings that have been placed there, it would not be reflected in the red area. In other words, the red area simply illustrates a relation between the proceeds
4919 from the sale of securities and the return on those same securities.

Mr. Boles: Irrespective of how the funds were used?

The Witness: Irrespective of how the funds were used.

Q. Now, it is in evidence in this case that the Lehigh Valley Railroad Company in 1905 bought for some seventeen millions of dollars the stock of Coxe Brothers &
4920 Company and issued mortgage bonds to pay for or to be part of the purchase price; the return which the railroad company has received upon the stock of Coxe Brothers & Company is less than the 4 per cent. interest which the railroad company is paying on the mortgage bonds. Now, how does that affect the red area in Exhibit No. 47?

Mr. Boles: Note an objection to the question as containing a very unfair and improper assumption.

A. I should say with the—— 4921

Q. Upon those facts as I have stated them? A. With the facts you have stated——

Mr. Boles: Upon the theory you have stated; not the facts.

A. (Continuing)—upon the hypothesis which you have stated, why, it would affect the red area.

Q. Now, the Lehigh Valley Railroad Company earned we will say one million dollars which it might have distributed among its stockholders as dividends, but which 4922 in point of fact it invested in the stock of the Coal Company, or of any other company, then if the money so invested yielded no return to the railroad company, would the red area be affected, the red area in Exhibit No. 47? A. No, it would not necessarily affect the red area in that case, because that would be a re-investment of surplus and not an investment of money realized from the sale of securities. The question then would be whether or not the increment of the value of the property so purchased would be sufficient to give it this 4923 return in kind that I have outlined.

Q. Then it would affect the red area? A. It would not affect the red area because the red area——

Q. The blue area includes a return in kind, does it? A. No; as to that color, that is only cash; the part that is uncolored that runs down the full line indicates the increment, but is not colored on the diagram.

Q. The blue area is colored right at the top? A. Yes, because that is the surplus cash; but the amount that is shown in blue and is marked "Difference between cash return and minimum fair return"—Oh, yes, I 4924 should correct that; that is the return in cash and kind.

Q. That is return in cash and kind? A. Yes.

Q. Then it would affect the red area? A. It would affect it if the increase in value of the property which is purchased was not equal to the amount that I have assumed as a fair return.

Q. In other words, if the increase in value of the property did not equal six per cent. on the investment the difference would be included in the red area? A. Precisely.

4925 Q. Even though the security in question was purchased with proceeds not directly of the issued securities by the railroad, but with money received by the railroad company as earnings or interest upon investments. A. In other words, if that rate of investment surplus did not earn its pro rata share as I have mentioned of $250,000 per annum, then the red area would be decreased to that extent.

By Mr. Boles:

4926 Q. About what percentage of the red area would be affected by an interest on two million dollars over that period? A. It would make a very small difference.

Q. Were you present when the Government placed in evidence certain quotations from the Financial Chronicle as to the increase in value of Lehigh Valley Coal Company's bonds for a certain period? A. No.

Q. Is there a considerable difference in the transportation business surrounding the carrying of anthracite and bituminous coal? A. Yes.

Q. What are some of the elements of the difference?

4927 A. The handling of the coal at the mines is more burdensome with the anthracite than with the bituminous, owing to the necessity of culling out and re-handling condemned coal. The classifications are very much more numerous in anthracite than with bituminous by reason of the large number of sizes and different qualities of anthracite; the storage of coal at tide water is a very large item with anthracite, it is not present with bituminous.

Q. Is bituminous coal graded? A. As a rule not.

Q. Is it dumped relatively cheaply at the terminal

4928 points? A. As to the act of dumping I should say there would not be very much difference, but the anthracite frequently has to be handled more times than bituminous, and, therefore, the dumping cost may be multiplied.

Q. Did I understand you to say this morning that of the sidings and trestles along the line of the New York Central many of them were leased for the purpose of handling bituminous coal by dealers? A. I don't remember so clearly as to bituminous coal; I do very clearly as to anthracite coal.

Q. On the New York Central? A. Yes. 4929

Q. A large number for the purpose of handling anthracite? A. Yes.

Q. Did it fall under your jurisdiction to assist in determining the rents at which the leases for trestles should be made on the New York Central? A. It did.

Q. In general on what basis were they made? A. When the matter first came to my attention I found out that either no leases had been executed with the occupant of the company's properties, or the amount of rent was merely nominal, and I started a campaign to reach the 4930 result that the return might be commensurate with the value of the property used.

Q. Did you do that for the sake of the company's income? A. I did.

Q. Did you find that among the anthracite leases that there was just as large a percentage at a nominal or no rental as among the others?

Mr. Machen: Object to as irrelevant.

A. I found no distinct class of innocents or guilty 4931 ones. Each man tried to get the use of his facilities for nothing, whether he handled coal or any other commodity.

Q. The making of these leases had the effect of assuring to the New York Central a considerable volume of tonnage, did they not? A. Certainly.

Mr. Machen: All of this re-valuation that you speak of is by the New York Central?

Mr. Boles: I have been asking him for the last ten or fifteen minutes about the making of leases, 4932 and the making of leases to dealers by the New York Central Railroad during the time when he was an officer of the New York Central Railroad and that matter was under his charge or direction.

Mr. Machen: I did not so understand the question. I object to any question as to the New York Central as irrelevant.

4933 By Mr. Machen:

Q. Mr. Wilgus, there is one further question I want to ask you about Exhibit No. 47, Diagram 8. Did you mean to say that if the security was guaranteed by the Lehigh Valley Railroad Company you treated it as an obligation by the Lehigh Valley Railroad Company just as if it had been issued? A. If it guaranteed it and the interest was being paid, if so, the Lehigh Valley Railroad Company was a guarantor, yes.

Q. In other words, if the Lehigh Valley Railroad Com-
4934 pany guaranteed the bonds of any corporation under the sun you treated those bonds as part of the capitalization of the Lehigh Valley Railroad Company? A. Yes, if the interest was paid by the Lehigh Valley Railroad. In other words, I only put as against each other, the securities issued and assumed or guaranteed by the Lehigh Valley Railroad, and interest paid by the Lehigh Valley system to the holders of such securities so that one would match the other.

Q. If the interest was paid not by the Lehigh Valley Railroad as guarantor, but by the principal, what then?
4935 A. Then I would not include it.

Q. I don't see how you managed the calculations? A. The Annual Reports reflected in each case who paid the interest.

Q. The capitalization of the Lehigh Valley Railroad Company then, for the purpose of this exhibit, was made to fluctuate from time to time according as the interest upon these guaranteed securities was paid by the guarantor or paid by the Lehigh Valley Railroad Company? A. Yes.

4936 By Mr. Boles:

Q. Suppose the securities upon which the interest was guaranteed had not been bought by the Lehigh Valley Railroad Company with funds raised from the issuance or sale of capital obligations, would the gain or loss from such securities then be reflected in this statement; in other words, suppose the Lehigh Valley Railroad Company had a certain amount of undistributed surplus and bought certain bonds and guaranteed the interest there-

on? A. If it did guarantee the interest and paid the in- 4937
terest they would both be in my statement and are in my statement.

Q. Irrespective of where they got the money? Irrespective of the source of the funds? A. As long as there were a certain number of bonds or stock issued and assumed or guaranteed by the railroad and as against that there was a certain amount of money disbursed by the railroad to the holders of such stock so that one matched the other.

Q. If the railroad paid the interest it is in blue, and 4938
if they did not it is in red? A. Yes.

By Mr. Machen:

Q. If the railroad paid the interest the guaranteed securities are in blue and if the principal debtor paid the interest it is in red? A. The conclusion almost anyone can draw from the statement I have made up, the statements are a fact, and that is that in each case the principal matched against the interest paid so that there could not be any chance of the railroad having 4939
a certain amount of capitalization the interest on which was paid by someone else.

Q. In other words, if the interest on guaranteed securities was paid not by the Lehigh Valley Railroad body corporate, but by the principal debtor, then both the interest and principal of these guaranteed securities are excluded from this table? A. Precisely.

Q. But if, on the other hand, the interest was paid by the Lehigh Valley Railroad then the amount of such interest is included in the blue? A. In the blue or the red as the case may be. 4940

Q. It would either increase the blue or decrease the red? A. Yes. In other words, the attempt was made from the Annual Report to have a logical situation by off-setting principal against interest to see what the return actually paid was on the principal.

4941 **Lyman D. Smith**, called on behalf of the Lehigh Valley Railroad Company, being first sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. Mr. Smith, what position do you hold with the Lehigh Valley Railroad Company? A. I am the vice-president.

Q. How long have you been such? A. Since January 19, 1910.

Q. What was your position with the railroad company
4942 prior to that time? A. I was assistant to the president from January 22nd, 1908.

Q. And prior to that time? A. I was the assistant secretary from July 19, 1905.

Q. During the time that you were assistant secretary did you also act as assistant to the president? A. Yes, without the title.

Q. And you were familiar with all matters passing to and from the president's office? A. Yes.

Q. Who was the president of the company at the time
4943 of the purchase of the stock of Coxe Brothers & Company and the Delaware, Susquehanna & Schuylkill Railroad? A. E. B. Thomas.

Q. Were you his active assistant at that time? A. I was.

Q. Did the various matters relating to that purchase come within your knowledge and supervision? A. They did.

Q. Will you tell us how it came about that the Lehigh Valley Railroad Company purchased the stock of Coxe Brothers & Company? A. Mr. Alexander B. Coxe, who
4944 was the managing director of all the Coxe family affairs, and the Coxe Brothers & Company, Inc., came to our president, Mr. E. B. Thomas, and stated that their family had received an offer for the purchase of the entire capital stock of Coxe Brothers & Company, and such corporations as Coxe Brothers & Company owned. That they had been engaged in business for a great many years, that many of the original people had died, that they were rather inclined to consider an offer for the purchase of their property as they were desirous of

getting out of active business, and that before they sold 4945
the property they wanted to talk with Mr. Thomas and offer the property to the Lehigh Valley Railroad Company, on the ground that they would prefer the Lehigh Valley Railroad Company's having it to any other party for a number of reasons. The first one being that Coxe Brothers & Company, Inc., as a corporation was mining a great deal of coal from lands which they leased from various members of the old Coxe family and the Coxes stated that they wanted——

Mr. Machen: Were you present at these nego- 4946
tiations?

The Witness: At some of them, yes.

Mr. Machen: You are speaking only about those at which you were present?

The Witness: I cannot now recall all of the meetings at which I was present, but I was familiar with all these facts.

Q. You were personally familiar with every detail of the transaction, were you not? A. Yes.

Q. At the time? A. At the time. They wanted to 4947
see that the mining was prosecuted by whoever should buy Coxe Brothers & Company on a scientific and economical basis, so as to conserve the greatest possible amount of coal in the land rather than against a wasteful mining, which while yielding large profit at the moment, would in the long run not conduce to the best results either for themselves or for the owners of the land; that they considered that the Lehigh Valley interests had always prosecuted coal mining with due regard to the conservation of the greatest amount of coal in the 4948
land.

Mr. Machen: I object to any hearsay testimony as to what they said as to what had been done or what they regarded might be done.

Q. Proceed. A. Mr. Coxe further stated that he had always considered that Coxe Brothers' were natural properties which if sold should come under the control of the Lehigh Valley interests, as they were adjacent or

4949 practically adjacent at all their points to the Lehigh Valley Railroad Company; that the Delaware, Susquehanna & Schuylkill Railroad, which they owned and which was entirely in the nature of an industrial road serving no other purpose than to assemble the coal of the collieries——

Mr. Machen: Is that what Coxe said or what you are now stating as your opinion?

The Witness: It is a great deal of what Mr. Coxe said.

4950 Mr. Machen: If you are going to say what Mr. Coxe said at all, against my objection, please state what he said and segregate it.

The Witness: I cannot repeat verbatim something which a man said nine years ago. It is the substance of what he said; it made a decided impression upon me that he should come down and talk the matter over the way he did; that he considered the Delaware, Susquehanna & Schuylkill road could only be used for the benefit of
4951 the Lehigh Valley Railroad as it did not reach any other railroad of consequence, if any road at all, and if we would meet the price which had been offered to them they would very much prefer because of their own interest in the matter, to sell the property to the Lehigh Valley Railroad Company.

Q. By their own interest you mean by that the fact that many of the members, or several of the members
4952 of the family, individually, owned large coal tracts? A. Exactly.

Q. Which were under lease to Coxe Brothers & Company for mining? A. Exactly.

Q. And whoever took over the stock of Coxe Brothers would have to continue the mining of the individual tracts belonging to the members of the Coxe family? A. That is the situation.

Q. At that time did the Lehigh Valley Railroad Company have a large volume of traffic moving over its rails in the trains of the Delaware, Susquehanna & Schuylkill Railroad? A. It did.

Q. At that time was the Lehigh Valley Railroad Company emerging from serious financial straits? A. It was slowly emerging from very distressing financial straits. 4953

Q. And if at that critical period it had lost this valuable tonnage which had been moving over its rails in the trains of the Delaware, Susquehanna & Schuylkill Railroad would it or not have been a vital blow to the railroad company? A. It would have been a vital blow, more particularly though in view of the fact that we had just issued several millions of bonds under our General Consolidated Mortgage which was in an untried market and untried expedient by the Lehigh Valley. The Lehigh Valley Railroad was simply in the position that it was not able previously to successfully sell any substantial issue of bonds. 4954

Q. Was it, therefore, a matter of great concern to the company when they found that Coxe Brothers & Company were in the market for the sale of their stock? A. It was a matter of such great concern that the president immediately assembled the Executive Committee and laid the matter before them, talked the matter over with me and said he didn't see how the Lehigh Valley Railroad under any circumstances whatever could afford to let the Coxe Brothers' properties fall into the hands of people who would divert the tonnage from its natural and normal outlet, viz., the Lehigh Valley Railroad. 4955

Q. And which had been the outlet for many years past? A. Always.

Q. Was legal advice taken as to the validity of the purchase at the time? A. It was.

Q. Have you any knowledge of favors or discriminations or preferences of any kind afforded to the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company by the Lehigh Valley Railroad? 4956

Mr. Machen: Objected to as calling for a matter of opinion and too general.

A. None whatever were granted. In fact, I know from my own personal knowledge that the president instructed the members or the heads of all departments

4957 to see that the law was obeyed in the strictest possible manner as respects all corporations who were shipping over the lines of the Lehigh Valley Railroad.

Q. Has the Lehigh Valley Railroad Company kept itself distinctly and absolutely apart from the management and control of the Lehigh Valley Coal Company? A. It has.

Q. Is the same thing true as to the management and control of Coxe Brothers & Company, Inc.? A. It is.

Mr. Machen: Note my objection to this ques-
4958 tion for the same reasons, as calling for a matter of opinion too general.

Q. On page 17 of the petition in this case is a charge that the Lehigh Valley Railroad Company and its officers, including you, and directors, among others have been and are parties to a combination or conspiracy to restrain and monopolize and have been and are attempting to monopolize and monopolizing the production, transportation or sale in interstate commerce of anthra-
4959 cite coal from the mines and lands located along the lines of the Lehigh Railroad by acquiring, and controlling such mines and lands, by acquiring control of the output of independent producers, by exerting the power of Lehigh Valley Railroad as a carrier to give undue preferences and advantages to the coal producing and trading companies controlled by it, and to discriminate against their competitors by other means." Is that statement or any part of it true?

Mr. Machen: Same objection.

4960 A. It is not true.

Q. On page 73 of the petition in this case is an allegation "that the purpose of the Lehigh Valley Railroad Company and those who control it in organizing the Lehigh Valley Coal Sales Company was to use the latter as a mere instrumentality for retaining under their protection and for their profits the monopoly which they acquired for the sale of anthracite coal from lands tributary to the railroad, and this has been accomplished through the arrangement hereinabove described," the

arrangement in question being the organization of the Sales Company, and the contract which is recited in the petition. Is any part or all of that statement true? 4961

Mr. Machen: Objected to for the same reasons.

A. Entirely untrue.

Q. Would you say that the Lehigh Valley Coal Company and Coxe Brothers & Company, Inc., are just as free in the management and control of their properties as any industry located along the line of this railroad? A. I could say it, and such is the case. 4962

Q. Do you know of any cash advances or any financial assistance ever afforded to the Lehigh Valley Coal Company which has not been fully returned and repaid? A. I do not.

Q. If you knew of any would you demand immediate reimbursement from the Lehigh Valley Coal Company? A. Assuredly we would.

Q. As vice-president of the Lehigh Valley Railroad are you in charge of the general financial and accounting matters of the company? A. I am. 4963

Q. Was every possible effort made in entire good faith by the Lehigh Valley Railroad Company to carry out the decree of the Court in respect of the sale of the subsidiary companies of the Temple Iron Company? A. It was.

Q. Was the acquisition of the stock of the Delaware, Susquehanna & Schuylkill Railroad a primary or a secondary consideration? A. Secondary.

Q. It came, as it were, simply as part of the matter you have above mentioned as to the purchase of the stock of Coxe Brothers & Company? A. It did. 4964

Q. Could we have refused to take that part if we wanted to? A. No.

Q. Was it a question of all or none? A. We had to purchase the entire property or none.

Q. Did you ever have laid before you, or did you ever see at any time, any evidence that the Delaware, Susquehanna & Schuylkill Railroad was in competition with the Lehigh Valley Railroad?

4965 Mr. Machen: Objected to as calling for a matter of opinion and question of law.

A. None whatever.

Q. Did the element of competition have anything whatever to do with the acquisition of the stock of that company? A. In no way whatsoever.

Q. Did Mr. John G. Johnson ever express to you the advice mentioned in the resolution of the Executive and Finance Committee of the Railroad Company, passed
4966 January 9, 1912, being stated in that resolution among other things, "Mr. Johnson's recommendation was that it would be expedient, even though not legally required, to make some arrangement by which the coal belonging to the Lehigh Valley Coal Company would be sold under a contract," etc.? A. He did.

Q. Did you impart his advice to the Executive and Finance Committee of the Railroad Company? A. Not directly, but to individual members. I reported directly to the president, and Mr. Johnson himself appeared before the Executive and Finance Committee.

4967

Direct Examination by Mr. Warren:

Q. Mr. Smith, you were never a director of the Lehigh Valley Railroad, were you? A. Never.

Q. And you were a director of the Lehigh Valley Coal Company, were you not? A. I was.

Q. And are at the present time? A. I am.

Q. And have been for how many years last past? A. Since January, 1908.

Q. Your position with the Lehigh Valley Railroad in
4968 the fall of 1911 and through the winter and early spring months of 1912, was what? A. Was vice-president.

Q. And associated especially with the financial and accounting matters of the Lehigh Valley Railroad Company? A. Yes, sir.

Q. You were familiar, were you not, in a general way with the gross business of the Lehigh Valley Coal Company in the year 1911? A. Yes.

Q. I note from Government Exhibit No. 38, on page 132 of our typewritten volume, that the gross anthracite

sales of Lehigh Valley Coal Company for the year 1911, 4969
were over $34,000,000 and for the year 1910 something over $32,000,000. Now, were you familiar with the details in connection with the organization of the Lehigh Valley Coal Sales Company? A. Yes.

Q. When did you first take up the consideration of the question of the Lehigh Valley Coal Company selling its coal under some form of contract at the mines in Pennsylvania and looking around to see a satisfactory way to provide for a purchaser? A. Several months before the company was organized. 4970

Q. The certificate of incorporation as I recall it was about two-thirds of the way through the month of January, 1912—at any rate during that month—so that you had given the matter consideration some several months prior to that date? A. At least six months, if not longer.

Q. First of all, you were familiar, I assume, in a general way, through the general counsel of the company, Mr. John G. Johnson, of what has been referred to in this case as the second commodities clause case against the Lehigh Valley Railroad Company? A. Well, I was in touch with Mr. Johnson all the time on that matter. 4971

Q. And, of course, were familiar with the first suit which was against several of the anthracite railroads? A. Very familiar with it.

Q. And then you recall that the Government sought to amend their petition against the Lehigh Valley Railroad Company and that it was refused by the Court in Philadelphia; that appeal was taken by the Government and that in the Supreme Court at Washington there decided that upon the averments of that petition the amendment ought to have been allowed and it was sent back; do you 4972
remember that circumstance? A. Yes.

Q. Now, Mr. Johnson's suggestion or advice with reference to the organization of the company which was afterwards known as the Lehigh Valley Coal Sales Company were what—state briefly?

Mr. Machen: Objected to as irrelevant and hearsay.

A. As I have stated before, I was constantly in touch with Mr. Johnson on all of these suits which the Govern-

4973 ment had brought alleging that the Lehigh Valley Railroad Company was operating in violation of the so-called commodities clause of the Hepburn Act and we had many talks about the situation. I told Mr. Johnson that we very much deplored the situation, of being the constant defendant in conducting a business which we believed to be conducted on legal lines by advice of all counsel we had employed. Mr. Johnson said that while he did not consider that the methods under which the business was conducted by the Lehigh Valley Railroad
4974 Company were in any way illegal in his opinion, that he would submit for our consideration the question of whether it might not be to our advantage in securing some peace and freedom from Government attacks enabling us to avoid the heavy expenses for legal services and further enabling the officers of the company to devote their time to the management of the property rather than resisting attacks, if we considered the advisability of organizing in some manner some company which would take over the selling business heretofore conducted and at that time conducted by the Lehigh
4975 Valley Coal Company. He accordingly asked me to see whether I could not work out some sort of a plan, some sort of an arrangement which would not work any great injury upon the stockholders and yet would care for the situation. I worked for several months on such a plan as that and finally submitted a scheme to Mr. Johnson. Mr. Johnson and I had several interviews with respect to the matter, and I made certain changes in the plans that had been worked out, acting on Mr. Johnson's suggestion. Mr. Johnson then
4976 said that since the plan which had been worked out would not in his opinion as a lawyer work any particular injury to the stockholders of the Lehigh Valley Railroad Company, he would recommend that we lay the matter before the president and that the president lay the matter before his Executive Committee and Board of Directors and, with his recommendation, that if they desired to escape these attacks and suits that were continually being brought up by the Government alleging we were violating the commodities clause, that such a company be

organized. The matter was laid before the president 4977
and in turn by him before the Executive Committee and before the Board of Directors. It was discussed and considered for perhaps two months, and it was finally determined by the Board of Directors that on Mr. Johnson's advice that the organization of such a company to take over the selling of the anthracite coal produced by the Lehigh Valley Coal Company would fully meet all the requirements of existing laws, that such a company be organized.

Q. Now, the resolution which Mr. Boles called your 4978
attention to was at a meeting of the Executive and Finance Committee of the Railroad of January 9th, 1912, was it not—that is what is stated in the petition? A. That is correct.

Q. Now, so that about that date—I have already called your attention to the fact that the Lehigh Valley Coal Company—that its gross anthracite sales for 1911 were over $30,000,000—the Coal Company was doing business in how many states that you know of? A. It was doing business in practically all states east of the Missouri River. 4799

Q. And in Canada to? A. And in Canada.

Q. By what sales agencies and departments in charge of this selling and merchandising of coal—anthracite coal—in the various states? A. It had quite elaborate organizations.

Q. They were selling, I suppose, some on salary and some on a commission basis, as agents usually are? A. I can only speak in a general way about the selling business of the Lehigh Valley Coal Company as that was not a matter in which I had any charge or control. I 4980
only know generally as a director would know.

Q. Who did it have? A. Mr. J. W. Skeele.

Q. He was the—what was his title? A. He was the vice-president and general sales manager, having absolute charge of the selling of the anthracite coal of the Lehigh Valley Coal Company.

Q. Was it practicable to attempt to dispose of the coal of the Lehigh Valley Coal Company to dealers at the mines? A. It was not.

4981 Q. Was it determined that the business of selling anthracite by the Lehigh Valley Coal Company was to terminate at a given date in the future? A. I don't understand the question.

Q. That is to say, in determining the method by which you would divorce the producing of anthracite coal by the Lehigh Valley Coal Company and the sales of anthracite coal by the Lehigh Valley Coal Company, it was thought desirable to fix some date in the future at which the coal was to be disposed of which the Lehigh Valley
4982 Coal Company then had on hand and a new concern was to take over the selling of this coal under some form of contract afterwards to be worked out?

Mr. Machen: I object to that question if it is intended to refer to the contract, because the contract itself is the best evidence.

A. It was.

Q. Do you know whether the coal company at that time was the lessee of the railroad of certain storage
4983 plants and others at different points along the lines of the Lehigh Valley Railroad Company? A. It was.

Q. And do you know whether it did not own certain facilities which were essential for the prosecution of the selling department of the Lehigh Valley Coal Company as it then was? A. The Lehigh Valley Coal Company owned many important facilities in the way of railroad yards or handling plants in addition to those leased.

Q. Now, as a business proposition was it in view that it was indispensable to find a single person who was
4984 able pecuniarily to buy the coal stocked belonging to the Lehigh Valley Coal Company in its various storage plants, and the coal in transit as of a certain date, and also having capital enough to take over the merchandising of anthracite coal from and after such given date, and still further to have a sufficient capital or a sufficient credit to secure a working capital to continue the business along the lines involved in a business aggregating over $30,000,000 a year in sales of coal? A. It was.

Q. Now, first of all, did you suggest to the president 4985
of the railway, or to the Executive Committee of the Railway, the declaration of a dividend, a cash dividend, out of the surplus of the Lehigh Valley Railroad as of a certain date? A. I did.

Q. I presume, as you say you were in charge of the financial and accounting matters of the Lehigh Valley Railroad, that you had previously ascertained that the Lehigh Valley Railroad could safely declare a dividend of a certain amount out of its surplus on hand? A. A cash dividend. We had a very large cash balance at 4986
that time.

Q. And what cash dividend did you determine to recommend and afterwards was by the Board declared? A. A ten per cent. dividend, payable in cash to all stockholders of record.

Q. Was it your idea that that would insure a company to be formed with a capital of about $6,000,000? A. Not entirely. I was uncertain as to whether the stockholders of the Lehigh Valley Railroad Company would care to go into the organization of such a corporation as we proposed to organize, as we could not 4987
get any guarantees and no assurances whatever as to the future prosperity of such a company.

Q. And, therefore, what steps did you take—what figure did you determine first it would be essential for a merchandising company to have by way of capital in order to take over this very large business which theretofore was the selling agency of the Lehigh Valley Coal Company? A. I personally figured that a fund of $10,000,000 or $12,000,000 would not be too large a capitalization for the corporation to have to engage in 4988
the large volume of business which I expected it would have to handle, and to provide for future enlargements of the anthracite business as it might occur. Mr. Johnson and certain others did not believe it would be advisable to organize a company with an uncertain future with so large a capitalization, and believed it would be more conservative if we organized it with a small capital. Accordingly, after a great deal of reflection, I estimated that the smallest capital on which it could satisfactorily do business would be $6,000,000.

4989 Q. I show you Exhibit No. 25; will you be kind enough to read that? A. (Witness examines exhibit.) Yes; that is the circular I myself prepared.

Q. That is the circular you prepared to go out to the Lehigh Valley Railroad stockholders? A. Yes.

Q. As a part of this plan for the organization of a Sales Company, do you know how and why the charter was taken out in the State of New Jersey; did you have anything to do with that? A. I did not. I simply was guided in that matter by the advice of such lawyers the
4990 Company could employ.

Q. You do know a charter was taken out and a Company organized in the State of New Jersey. A. Yes, I do.

Q. And in connection with that organization, Mr. Skeele, was, I have no doubt, consulted by you from time to time, was he not? A. Mr. Skeele was personally familiar with every step that was taken, and as soon as it was determined to organize a sales company, Mr. Skeele was placed in entire charge of all matters that related to the future business of the proposed Company.

4991 Q. Who suggested, if you know, the incorporators of that Company? A. Mr. Skeele, I believe, suggested them.

Q. Did he ask you to be one of them? A. He did.

Q. Mr. George N. Wilson is named as one of them, do you know him? A. I do.

Q. What was his position with the Lehigh Valley Railroad at that time? A. Prior to the organization of the Lehigh Valley Coal Sales Company, Mr. Wilson was the General Auditor, and, as such, was familiar with ac-
4992 counting and financial matters.

Q. At one time, as you may recall, he had been General Auditor of the Coal Company as well, was he not? A. He at one time had been connected with the Lehigh Valley Coal Company.

Q. So that he was entirely familiar with the accounting features of the selling department of the Lehigh Valley Coal Company at that time? A. In a general way, yes.

Q. And what would you say as to his capacity to take 4993
charge of the financial and accounting matters of the proposed selling company in order to do justice to its stockholders and to capably and fairly administer such affairs? A. I should say that he was entirely competent to administer such affairs.

Q. Do you know why Mr. Skeele asked the Lehigh Valley Railroad to allow him to take over Mr. Wilson from the Railroad service with him to the proposed sales company organization? A. Mr. Skeele had never had any very great experience along accounting and financial 4994
lines and he felt the need of such a man being connected with the proposed company.

Q. Do you know how Mr. Wilson came to go with the Sales Company? A. I am very familiar with that fact.

Q. Just tell us, please? A. Mr. Skeele was the only man of the Lehigh Valley Coal Company who was thoroughly conversant and familiar with the sales of Anthracite coal and handling of the selling organization. It was logical, therefore, that he should become President of the new corporation, whose exclusive business was the merchandising of coal. Mr. Skeele felt, how- 4995
ever, that although he was fully competent to handle the selling business, that his previous training had not been along accounting or financial lines, and he therefore wished to associate with him as an officer of the proposed Company, someone whose experience was along those lines. Mr. Skeele looked among his acquaintances and business associates who had training in accounting and financial matters; he had known Mr. Wilson for a number of years, and had a high regard for his ability along those lines, and he felt that he was 4996
just the man to be associated with him in the new Company. He accordingly invited Mr. Wilson to entertain the proposition to become an officer of the Sales Company. Mr. Wilson accepted.

Q. And while we are speaking of Mr. Wilson, after March 1st, 1912, has he had any association or employment in any way, shape or manner, with the Lehigh Valley Railroad Company? A. None whatever.

Q. Your desire, as I understand it, was to secure an organization to take over not only the merchandising

of Anthracite coal, which had, theretofore, been the selling Department of the Lehigh Valley Coal Company, but also to take over the coal which it had in stock and in transit, and also its facilities, such as plants and yards, and trestles, wherever they were, and at the same time insure the Coal Company of an organization upon which it could rely satisfactorily, from the standpoint of the Coal Company, to buy its coal at the mines. A. That was my desire.

Q. The purpose being what, as to the Lehigh Valley Coal Company, as to the dealing in anthracite coal, and as to the date of the making of a contract, if one was to be made? A. The purpose being to eliminate the Lehigh Valley Coal Company, as the owner of many valuable mines and as mining a great deal of coal, from being under the necessity of looking for some other purchaser of its coal, and to relieve it entirely of the sale of coal generally, as well as shipments.

Q. Deliveries to be made where? A. Deliveries to be made at the mouth of the mines in the State of Pennsylvania.

Q. Where all of its anthracite properties are located? A. Yes.

Q. Now, did you take steps to ascertain the quantity of coal which the Lehigh Valley Coal Company had in stock? A. Yes.

Q. What did you do to ascertain the rental basis or other charges for the property that the Lehigh Valley Coal Company theretofore held, either in fee or as a lessee from the Railroad, to charge the Sales Company; how did you go about that? A. I first called upon the Real Estate Department of the Lehigh Valley Railroad Company for a list of all the properties, and obtained their views as to what they considered would be a proper rental. I was not satisfied to rely entirely upon the judgment of our own people, and, therefore, employed Mr. W. J. Wilgus, who I believe to be a reliable expert on the valuation of such property as that which you have mentioned, who sent an engineer and valued the property, he personally drove over many of the plants himself, and based upon his recommendation as to the value of these plants, the rental was fixed.

Q. The value of the coal in storage, how was that 5001
arrived at? A. That was arrived at by taking the book figures, which, of course, did not necessarily represent the amount of coal which might be on hand for the reason that in the shipment and storage of anthracite coal, there is more or less of degradation, wastage, shrinkage, and shortage, from a half dozen different sources.

Q. Do you mean the value of the coal was placed upon the books or simply the amount of coal? A. The amount of coal.

Q. The prices fixed for the sale—— A. The amount 5002
and value both, as represented by the books; the book value; not the market value.

Q. That is to say, the prices that you finally arrived at in negotiations with the people who were to be the sales company people, with Mr. Skeele or Mr. Wilson, were a matter of discussion and argumentation? A. It was a matter of very great discussion and argument, and the preparation of a great many figures, not only on the part of Mr. Skeele and Mr. Wilson, who were our prospective purchasers, but also on the part of Mr. 5003
Tompkins of the Lehigh Valley Coal Company, and of the General Manager and other officers of the Coal Company having charge of that particular matter.

Q. You finally arrived at what basis as to the stock of coal, by way of payment, I don't mean figures, but did you finally agree with them to take the book value as to both quantity and prices? A. Not entirely. It was the best matter of bargain and sale that could be arrived at between the two, you might say, conflicting interests. After this long argument and discussion we 5004
finally decided upon a price which in the opinion of all was to be fair to both parties.

Q. Was it your purpose to arrive at what would be a fair and equitable basis for the transfer at a given date for so large a quantity of coal? A. It was, and it was very difficult to arrive at that cost. Coal was moving in transit, some of it had been stocked for a long while. We were not sure whether all of the coal which our books called for was on hand, or was not, because of the degradation which constantly goes on in the handling plants as I have previously mentioned.

5005 Q. It was finally determined, was it not, to make a contract for the stock of coal and for the coal in transit as of March 1st, 1912? A. It was.

Q. Prior to the arrangement, which is the basis of the sales contract, I mean? A. Yes; we had to anticipate.

Q. And your purpose was to ascertain what would be an equitable and fair price to pay for that large quantity of coal in storage, having in mind the degradation and the waste in rehandling, and the various items which entered in the rehandling of the stock of coal? A. Yes.

5006 Q. And you were obliged to use that as of a future date, were you not? A. Yes, that is to say, these dealings were through, we will say, January, February and March, these various negotiations and considerations of not only the price to be paid for the stock of coal, but the rental to be paid for the facilities to be leased, and the basis of a proposed contract for the sale of your Lehigh Valley Coal output at the mines? A. Yes.

Q. And what period of time would you say those negotiations covered? A. Two or three months.

5007 Q. With various conferences? A. Yes, with conferences day after day.

Q. Two or three months? A. Yes.

Q. Do you recall Mr. Warriner, at that time the Vice-President, I think, and General Manager, at any rate, of the Lehigh Valley Coal Company attending those conferences? A. Yes.

Q. And Hon. F. W. Wheaton, the General Counsel of the Lehigh Valley Coal Company? A. Yes.

Q. And Mr. Skeele, as President of the Lehigh Valley Coal Sales Company, which had been organized in Janu-

5008 ary, but which you proposed to deal with as of March 1st? A. Yes.

Q. As well as Mr. Wilson, who would have to have charge of the accounting matters for the proposed organization? A. Yes, Mr. Skeele and Mr. Wilson were present at practically all the interviews.

Q. Now, as to the price to be paid both for the stock of coal and for the coal in transit, and the coal which the Lehigh Valley Coal Sales Company was to take over, it was a matter, I assume, of bargaining? A. It was.

Q. Going now to this circular of January 19th, I note 5009
that you say to the stockholders that a privilege will be accorded them to subscribe to the extent of this cash dividend, which was to be given to them out of the surplus of the railroad company, to the stock of the proposed—not of the proposed—but of the Lehigh Valley Coal Sales Company? A. Yes.

Q. Do you recall that? A. Yes.

Q. And in case the stockholders of the railroad did not desire to avail themselves of that privilege, the circular says that Drexel & Company had agreed to underwrite 5010
the balance of such untaken stock, or, in other words, agreed to subscribe for such of the stock of the Lehigh Valley Coal Sales Company as the stockholders of the Lehigh Valley Railroad Company did not desire to subscribe for out of the cash dividends, do you recall that? A. Yes.

Q. And so Drexel & Company are made the agents or attorneys for the stockholders of the Lehigh Valley Railroad, such as desire to subscribe to the stock of the Lehigh Valley Coal Sales Company, do you recall that? A. Yes. 5011

Q. Now, tell us, please, why you asked Drexel & Company to underwrite, so to speak, a portion, possibly, or all, if necessary, of the proposed capital of the Lehigh Valley Coal Sales Company? A. Because I had no assurances whatever that the stockholders of the Lehigh Valley Railroad Company, would, upon receiving their dividend, decide to subscribe to the stock of the Lehigh Valley Coal Sales Company as I had previously stated, and I considered that $6,000,000 in round figures as the very minimum amount of capital that this company 5012
could successfully do business upon, and it was, therefore, absolutely essential that something be done to insure the subscription to its capital stock to the amount which I have named.

Q. Did you personally make the arrangements with Drexel & Company? A. I did.

Q. What did you do, if anything, by way of compensating them for their contract to subscribe for such portions of the sales company stock as the stockholders of

5013 the railroad company did not care to subscribe for? A. I told Messrs. Drexel & Company that I was prepared to do anything that was fair and reasonable in compensating them for their services in underwriting the capital stock of the Lehigh Valley Coal Sales Company, and in acting as the attorney for the stockholders, an arrangement which I made solely for the convenience of the stockholders, both, as I did not know and as far as I could see they themselves could not determine just what would be involved from their standpoint, and I thought
5014 we had better leave that matter of compensation until later on. After the company was organized, and when we found that all the stockholders of the Lehigh Valley Railroad Company had not availed themselves of the privilege, Drexel & Company, in accordance with the proceedings mapped out by the Board of Directors, took up those options which the stockholders had failed to exercise, made the subscription in their own name and right as an individual, and all that we paid or compensated Drexel & Company in the matter was actual expense as represented by clerical hire, postage, stationery,
5015 and such few books as they had to buy for the stock allotment, which was a very inconsequential sum.

Q. Now, about the time you sent out the circulars to the stockholders of the Lehigh Valley Railroad Company, did you take steps to advertise the matter so that stockholders generally, and those interested in financial matters might have knowledge of the proposed plans? A. We took every reasonable step and precaution to see that every stockholder of the Lehigh Valley Railroad Company, both in this country and abroad, should be ad-
5016 vised of the situation, and in addition to the advertisements in the daily papers, a circular was mailed to each and every stockholder of record.

Q. You then did advertise in certain papers? A. We did.

Q. And did the advertisement contain substantially the circular of January 19th? A. It did.

Mr. Warren: In this connection I offer in evidence the Financial Chronicle, which the government counsel had recourse to and vouched for

under date of January 13, 1912, page 123, and I ask the stenographer to copy that part of page 123 into the record which has to do with the Lehigh Valley Railroad. 5017

(Copy referred to as follows):

"LEHIGH VALLEY R. R.—Extra 10% Dividend Available for Purchase of Stock in New Coal Sales Company.——

The directors on January 11, authorized an appropriation of $6,060,800 out of the accumulated surplus and distribution of the same as a dividend on Feb. 26, 1912, pro rata to common and preferred stockholders of record Jan. 19, 1912, such distribution being equivalent to 10% on the outstanding stock. Stockholders may apply this dividend, as below stated, in paying at par for their pro rata share of the stock of the Lehigh Valley Coal Sales Company, or, if not subscribing for such stock, will receive a check in payment of the dividend on Feb. 26. 5018

The Directors of the Lehigh Val. Coal Company on Jan. 11, authorized the organization in N. J. of "Lehigh Valley Coal Sales Co." with an authorized capital stock of $10,000,000, consisting of 200,000 shares at $50 each, of which 121,216 shares ($6,060,800) will be issued immediately, the balance being reserved for future needs. The official announcement says: 5019

' "The Lehigh Valley Coal Company proposes to enter into a contract with the sales company for the purpose of having the latter purchase and sell, during a time and upon equitable terms, which will be fixed in said contract, such coal, as, during said time shall be mined, purchased or otherwise acquired by the Lehigh Valley Coal Co. or affiliated companies. It is further expected that under such contract the coal sales company will thereafter conduct generally all such matters as are now conducted by the Lehigh Valley Coal Co. incident to the transportation and marketing of its coal." ' 5020

5021 "The Lehigh Valley Coal Co. has further authorized a subscription for said 121,216 shares of stock of said coal sales Company, by the stockholders of the Lehigh Valley Railroad Co. holders of the shares of the Railroad Co. being given the privilege of subscribing at or before 3 P. M., February 23, for an amount equivalent to 10% of their holdings as recorded at 3 P. M., January 19, 1912. All shares not subscribed for by 3 P. M., February 23, 1912, and paid for by 3 P. M., February 26th, 1912, will be
5022 taken at par by an underwriting syndicate organized by Drexel & Co. of Philadelphia."

"Formal notice of this matter will be mailed to the stockholders of record, January 19, 1912, accompanied by a blank power of attorney, which power, if signed and sent to Drexel & Co. prior to 3 P. M., February 23, will authorize the firm to subscribe to the capital stock of the sales company in the amount to which the stockholder is entitled, to receive the dividend due the stockholder, and to use the said dividend for the purpose of paying the sub-
5023 scription to the capital stock; and thereafter deliver the stock when the same may be ready for delivery. Blank powers of attorney may also be obtained from either Drexel & Co., or the Secretary of the Lehigh Valley R. R. Co., at Phila.-V. 93, p. 1106."

Q. Was one of the purposes of fixing the dates of the taking over of the purchase of the coal of the Lehigh Valley Coal Company, as of March 1st, 1912, when you were preparing this plan in the winter of 1911 and 1912,
5024 to give an opportunity to the stockholders of the railroad company—to give them reasonable notice—so that they could subscribe if they desired, or decline if they desired? A. Yes.

Q. Was it ever in your mind, either by the circular or by any other way, to try to force Lehigh Valley Railroad stockholders to take this stock? A. Oh, no, not under any circumstances. In fact, if you will read the circular carefully you will notice that if a stockholder did not want to subscribe all he had to do was to do nothing, and

he would get a check for his dividend; but if he wanted 5025
to subscribe for the stock of the sales company then he had to execute a power of attorney and send it in the envelope funished for that purpose.

Q. The government assumes in its petition filed in this case, by reason of the fact that the provision with reference to the stockholders of the railroad was, that they were to take their whole allotment of the stock of the proposed company or none, that that was for the purpose of securing identity of stockholders of the Railroad Company and the Coal Sales Company. Did you know, 5026
what was the purpose, the actual purpose, of framing the circular in that way that it required a stockholder to take his entire allotment if he desired to take any? A. That provision was inserted solely as a matter of convenience to the Lehigh Valley Railroad Co., so that they would not have to split these subscriptions; in other words, to avoid the necessity of going through a lot of trouble and work in the case of a man who had a hundred shares of Lehigh Valley and he wanted part of his dividends in cash, and then wanted to subscribe to a little bit of the Sales Company stock. The Lehigh Valley Rail- 5027
road did not, in any way, and a careful reading of the circular will bear out the truth of the statement, try in any manner whatever, to advise, influence, coerce, or recommend to a stockholder that he subscribe to the stock of the Lehigh Valley Coal Sales Company, in other words, it was purely for accounting purposes and purely as a matter of convenience in issuing this stock.

Q. The dividends by the railroad company were declared payable as of what date? A. I do not recall the exact date, but it was in advance of the organization 5028
of the company.

Q. But it was some date in February, was it not? A. I cannot tell; I cannot carry these dates in my mind.

Q. By referring to the circular you note, do you not, that the railroad company's dividend was distributed on February 26, 1912? A. Correct.

Q. Now, it was a dividend to be distributed to stockholders who were stockholders of record sometime in January? A. Yes, sir.

5029 Q. As the circular states? A. Yes, sir.

Q. It being essential, as you have said, to perfect the organization of the Sales Company on or before March 1st? A. Yes, sir.

Q. And to provide for funds for the purchase of the stock coal and coal in transit and other matters, would it not have caused interminable confusion if you had had to deal with the small fractional subscriptions of portions of allotments of the seven thousand odd stockholders of the Lehigh Valley Railroad Company be-
5030 tween February 26th and March 1st? A. It would have been very awkward and inconvenient; it would have delayed the successful organization of the company to a later date.

Q. Don't you know as a matter of fact that there were some stockholders of the Railroad Company who intimated to you, gentlemen you know, that they did not care to take any stock in the Lehigh Valley Coal Sales Company? A. There were a great many such stockholders, and a good many of them went out of the way to write to the company stating that they did not desire
5031 to subscribe to the stock of the Lehigh Valley Coal Sales Company.

Q. And did you ever by any intimation to any of these gentlemen, either verbally or in writing, try to urge them to take stock in the Coal Sales Company? A. In no way whatever.

Q. You figured, did you not, that it would require upwards of $6,000,000 by way of capital, in cash, by the Sales Company, in order to buy the stock coal and coal in transit of the Lehigh Valley Coal Company? A. I
5032 don't think it took quite $6,000,000, but it took $6,000,000—it needed $6,000,000 to buy the stock of coal on hand and be in a position to buy the necessary amount of coal which would be mined in subsequent months.

Q. And, of course, they had to have capital not only sufficient to buy the stock coal and the coal in transit, but to take deliveries at the mines and pay for the Lehigh Valley Coal Company coal that they were to buy as of March 1st and thereafter? A. Yes, sir.

Q. And also to provide for funds to pay for current 5033
freights, an essential factor in their doing business, isn't that true? A. Yes, sir.

Q. And while we are right there, do you not recall that the Sales Company, among the first things they had to do, was to borrow upwards of a million dollars in addition to their capital, all of which was subscribed for either by stockholders of the railroad or Drexel & Company, was it not? A. Yes, sir.

Q. In order to meet current bills and to launch out in business? A. I know soon after the organization that 5034
we did go out in the market and borrow money on note.

Q. Now, the first officers of the Lehigh Valley Coal Sales Company, as appearing on Government's Petition, page 69, I think you referred to John W. Skeele, and you recall George N. Wilson was elected Vice-President and Secretary, and Mr. W. J. Burton, Treasurer and Assistant Secretary, and Mr. A. R. Kyle, Assistant Treasurer? A. Yes.

Q. Now, of the directors; Thomas W. Lamont, do you know with what concern he is associated? A. He is a 5035
member of the firm of J. P. Morgan & Company.

Q. William R. Evans is now the Vice-President and General Sales Agent of the Lehigh Valley Coal Sales Company, is he not? A. Yes, sir.

Q. And as such is actively employed in the development of the company's business? A. Yes, sir.

Q. Paul Moore is a lawyer here in New York, is he not? A. Yes, associated with the firm of O'Brien, Boardman & Platt.

Q. Francis L. Hine, do you know of that gentleman, do you know what concern he is connected with? A. 5036
He is president of the First National Bank.

Q. Horatio G. Lloyd? A. He is a member of the firm of Drexel & Company, Philadelphia.

Q. And Lyman D. Smith is yourself? A. Yes, sir.

Q. And was it at Mr. Skeele's request that you went on the Board of the Lehigh Valley Coal Sales Company? A. Yes, sir.

Q. So that it was essential that this new organization should have credit as well as capital, wasn't it? A. Yes, sir.

5037 Q. And these gentlemen who Mr. Skeele asked to act as directors, all of whom you named, will you state whether they were all known men of probity and good character and business experience? A. They were considered to be men strong in the financial world and men who, if they lent their name to a corporation, could be relied upon to do everything in their power to assure the success of the corporation.

Q. And they were men of probity, were they not? A. They were.

5038 Q. And in good standing? A. Yes, sir.

Q. Having ascertained from Mr. Wilgus, following the investigation made of the real estate, to which I have referred, did you have anything to do with fixing the rentals of the premises that were to be leased to the Lehigh Valley Coal Sales Company? A. Not specifically. I simply issued instructions to those concerned, who had charge of the matter for the Railroad Company, that the rentals must be such as to yield us a fair and proper return upon the value of the property to be leased.

5039 Q. And having in view the fact that they have to pay the taxes and the insurance and also keep the premises in repair, what do you say as to the rentals, if you are familiar with them, that were finally agreed upon? A. I should say the rentals were very fair and equitable.

Q. Was there any purpose in fixing the rentals to give any preference in any way to the Lehigh Valley Coal Sales Company in the matter? A. None whatever.

Q. Taking up the exhibits in order attached to the Government's petition; Exhibit No. 1, is the agreement
5040 between G. B. Markle & Company and Lehigh Valley Coal Company, you, of course, were familiar in the winter of 1911 and 1912 with the existence of that contract? A. Yes, sir.

Q. And that it had some six or seven years still to run, having been made December 30th, 1889, for a period of thirty years; in other words, expiring January 1st, 1920? A. Yes, sir.

Q. Now, in order to absolutely and entirely disassociate the Lehigh Valley Coal Company from the

selling or merchandising of anthracite coal, or being interested in the coal shipping by any railroad, it was essential, was it not, to transfer the carrying out of that contract to some other concern? A. Yes, sir. 5041

Q. And it was finally decided to transfer that to the Lehigh Valley Coal Sales Company, was it not? A. Yes, sir.

Q. And from March 1st, 1912, to the present time they are carrying out that contract, are they not? A. Yes, sir.

Q. And the Lehigh Valley Coal Company have what, if any, relations with that contract since March 1st, 1912? A. None whatever to my knowledge. 5042

Q. And you found also that the Lehigh Valley Coal Company was the vendee in a few so-called 65 per cent. contracts, did you not? A. Yes, sir.

Q. It was essential that they should be turned over to some concern, was it not, to relieve the Lehigh Valley Coal Company from engaging in the business of selling or merchandising coal? A. It did not transfer the 65 per cent. contracts.

Q. I mean carrying out the 65 per cent. contracts, the buying of the coal under the 65 per cent. contracts? A. The coal was taken by the Lehigh Valley Coal Sales Company. 5043

Q. Yes. And the Lehigh Valley Coal Company was relieved of all of the business transactions that theretofore existed between the vendors under these contracts, and the Lehigh Valley Coal Company? A. As a practical matter, yes, sir.

Q. Exhibit No. 3 is the contract of March 1st, 1912, made between the Lehigh Valley Coal Company and the Lehigh Valley Coal Sales Company. You, of course, are familiar with the terms of that contract? A. Yes, sir. 5044

Q. And participated in the negotiations as between Mr. Skeele and Mr. Wilson on the one side and Mr. Warriner and Judge Wheaton and other gentlemen on the other? A. Yes, sir.

Q. And you recall the bargaining and discussions and negotiations which finally culminated in the making of

5045 the contract in the form in which it now appears? A. Yes, sir.

Q. What in a general way was the purpose of making that contract? A. The purpose was to relieve the Lehigh Valley Coal Company in every way, nature and manner from the sale and shipment of anthracite coal, or any other coal contract which it might have.

Q. Its terms, what would you say as to its terms with reference to the prices paid for the coal stored at points both west and north of Buffalo and east of Buffalo? A.

5046 I should say they were fair and equitable.

Q. The coal in transit, the contract provides, shall be taken over as of midnight, February 28th, at the prices prevailing for the month of February. What would you say as to the fairness and equity of that arrangement? A. I should say it was very fair, because it was to be expected that the March prices would be substantially the same as the February prices, so far as anyone could determine.

Q. So that as to coal in transit, the Sales Company simply agreed to take that and to pay the prevailing

5047 prices for the month of February? A. Precisely.

Q. Now, as to this coal that was stored in various places, was it sold with any differentiation as between the various sizes included, the small and the prepared sizes? A. It was not.

Q. In other words, the prepared sizes, wherever stored, if west or north of Buffalo were to be taken over at $5.75 per gross ton? A. Yes, sir.

Q. If stored at Buffalo and points east, at the sum of $4.00 per gross ton? A. Yes, sir.

5048 Q. And then as to sizes smaller than prepared, the price as stated in the contract was finally agreed upon? A. Yes, sir.

Q. And, speaking broadly and generally, the prepared sizes represented at least 60 per cent. of the total stock coal, did it not? A. That is my recollection.

Q. Was there an adjustment made between the Lehigh Valley Coal Company and the Lehigh Valley Coal Sales Company as to the taxes for the year 1912, assessed or to be assessed against the stored coal? A. Yes, sir.

Q. In other words, the Lehigh Valley Coal Company 5049
was the owner of that coal for January and February of that year and therefore, equitably subject to a two-twelfths of such assessment as might be made or levied upon that coal by the taxing authorities in the various localities? A. Yes, sir.

Q. And so even that point was covered so as to secure equitable treatment as between the Lehigh Valley Coal Company and the Lehigh Valley Coal Sales Company? A. Yes, sir.

Q. And do you know whether the Lehigh Valley Coal 5050
Sales Company assumed the burden of paying all charges of whatever nature that might be in connection with the storage of the coal, and whether they assumed the risks in connection with the degradation and loss thereof, the depreciation in quantity as well as the cost in rehandling? A. They did absorb all such charges and interest.

Q. In other words, the Lehigh Valley Coal Company was cleared of all those items all through, either of debit or possible expenditure? A. That price was fixed on the
basis of the Lehigh Valley Coal Company being all 5051
through with its coal, either in stock or transit, on midnight of February 28th.

Q. As well as all through with the merchandising of anthracite coal? A. Entirely through with the merchandising of anthracite coal, likewise on that date and the Lehigh Valley Coal Sales Company had to assume any loss or shortages or risks that might be encountered after that date.

Q. And let me ask you right now, Mr. Smith, after the
contract of March 1st was made, did not the Lehigh Val- 5052
ley Coal Company withdraw absolutely from marketing its coal or any coal? A. Absolutely.

Q. What have you to say as to the sum that was to be paid as rental for such new constructions or additions as the contract provided might possibly be made in the storage plants and facilities which were leased to the Sales Company? In other words, the figures of 4½ per cent. net of such value? A. I considered that more than fair and equitable as respects the Lehigh Valley Coal Company.

5053 Q. Was consideration given in that figure to the rental value of the facilities to determine that which would work out fairly, representing both concerned, lessor and lessee? A. Yes, sir.

Q. Do you recall whether there was any discussion as to what the Lehigh Valley Coal Sales Company was to do with reference to developing markets, or making good markets which they were already in but which for one reason or another were not remunerative markets as well as going into new markets, and if so will you tell
5054 us briefly the scope and purpose of the contract in that regard?

Mr. Machen: Is this the written contract you are referring to?

Mr. Warren: Certainly, this is all the written contract.

Mr. Machen: Then I object to the question because the contract itself is the best evidence.

The Witness: It had been a policy of the Lehigh Val-
5055 ley Coal Company, when it was engaged actively in the mining and selling of anthracite coal, to extend its business as much as possible. To do that it was necessary to enter into new markets, new territory, where the margin of profit was not very large, where other concerns had been selling coal, and where it was difficult for the Lehigh Valley Coal Company to get a footing. It was also necessary at many points, particularly in the northwest and middle west, to secure proper facilities, in order that the Lehigh Valley Coal Company's coal might be handled by
5056 dealers—served to the so-called wagon trade. The Lehigh Valley Coal Company had had to put up facilities at many such points, and the volume of business at the start was so small that the coal was sold at an actual loss. The policy was persisted in, because from past experience we had discovered that if you stuck at a market long enough, and kept pushing your coal, you gradually got a volume sufficiently large, after a period of years, to make it remunerative. When Mr. Skeele and Mr. Wilson entered into negotiations for a form of contract

which they were willing to put up to the Board of Di- 5057
rectors of the Sales Company for their action, they naturally demurred at continuing the sale of coal in markets which had shown either a very small profit and, in many cases no profit at all, even, and stated that they did not care to sell any coal that did not net them a fair margin of profit. The officers of the Lehigh Valley Coal Company stated that they would consider it advisable, and, in fact, essential to the interests of the Lehigh Valley Coal Company to have its coal put in as many markets as possible. As a result of a great many argu- 5058
ments on the matter, we finally agreed to make some slight concessions in prices for part of the coal, on a scaled basis for a certain number of years, each year we getting more for our coal than the preceding year.

Q. The concessions from prices lessening each year? A. Lessening each year. So that that policy which had prevailed while the Lehigh Valley Coal Company sold its coal might continue.

Q. Do you know whether the officers of the Lehigh Valley Coal Company insisted upon the Lehigh Valley 5059
Coal Sales Company devoting its entire time to the merchandising of the Lehigh Valley Coal Company's product, other than its contract obligations with Markle? A. It did, and the contract—I personally insisted that there be inserted in the contract a provision to the effect that they were to devote all of their time to selling the coal of the Lehigh Valley Coal Company, and in doing everything possible to extend the trade in Lehigh Valley Coal.

Q. And, if I understand it, the allowances, so-called, from the 65 per cent. prices, which were finally incor- 5060
porated in this contract, were inserted, so far as you recall, because of your provision requiring them to devote their entire time to the extension and development of the company's business in markets which, temporarily, might be not only non-remunerative, but even occasion loss? A. That is the situation.

Q. The 65 per cent. prices or basis, as it is sometimes called, of negotiations for the purchase of anthracite coal, is one that has been in vogue for many years in

5061 the anthracite region, is it not? A. It is an old established custom, and considered by us as probably the fairest and best joint arrangement that could be used to determine a price for which we would sell our coal to the Lehigh Valley Coal Sales Company.

Q. Do you recall the cancellation clauses in the contract? A. Yes, sir.

Q. Will you state the purposes of the inclusion of those clauses in the contracts? A. That cancellation clause was inserted in there as much at the request of
5062 the Lehigh Valley Coal Sales Company, the new company, as it was desired by the Lehigh Valley Coal Company; for the reason that the matter of the organization of the Sales Company and its methods of doing business were untried and uncertain, and we could not tell what the future would bring forth. Therefore both parties desired to be in a position whereby if matters did not work out as they anticipated when they prepared this contract, they would be free to take up any further adjustments which might be necessary with the other party.

5063 Q. In other words, there were no assurances that the new concern would and could most advantageously handle that contract? A. Yes, sir.

Q. You were forecasting the future, were you not? A. We were forecasting the future.

Q. The contract became effective March 1st, 1912. At that time, will you state whether you had any knowledge, or even dreamed, of cessation in mining, or of any unusual or abnormal demand for coal in that year in consequence? A. No knowledge whatever as to what
5064 the future would bring forth in that respect.

Q. The contract of March 1st, 1912, and the lease to and with the Lehigh Valley Coal Sales Company, as finally executed, or, in other words, in final form, was submitted to your counsel, were they not, Mr. Johnson? A. They were.

Q. Do you know whether they were submitted to the Department of Justice of the Government of the United States?

Mr. Machen: That is objected to.

The Witness: They most certainly were, because one 5065
of the points that I raised with Mr. Johnson was that we did not want to organize this company and then be attacked further by the Government, if it was possible to avoid any such issue.

Q. You did not know the possibilities? A. No.

Q. But you recall seeing the report of the Attorney General of the United States for the year 1912? A. I recall that very well. It was a source of much satisfaction to me.

Mr. Warren: At this time I will take the lib- 5066
erty of offering the report of the Attorney General for the year 1912, out of which I desire to read into the record only the reference to the organization of the Lehigh Valley Coal Sales Company to be found upon page 23, and a part of page 24, and I will ask the stenographer to copy that into the record under the heading "Commodity Clause Cases." This is the report of the Attorney General for the year 1912, public document issued by the Department of Justice, 5067
and it is addressed to the Senate and the House of Representatives, and bears date December 2nd, 1912.

Mr. Machen: I object to the admissibility of this report as irrelevant.

The following is a copy thereof:

"Matters Arising Under the Interstate Commerce Laws.

"Commodity Clause Cases. 5068

"Following the decision in the case of United States v. Lehigh Valley Railroad Company referred to in my last annual report (220 U. S. 257), remanding the case to the circuit court with instructions to allow the Government to amend its complaint in order to show that the Lehigh Valley Coal Co. was in fact a mere adjunct, instrumentality, or department of the railroad company, and, therefore, that ownership of the coal by the coal company at the

5069 time of transportation, amounted in reality to ownership by the railroad company, and was transported in violation of the commodities clause of the commerce act (34 Stat., 584), the railroad company filed in answer to the amended complaint putting its allegations in issue. Subsequently, however, the railroad company caused to be incorporated under the laws of New Jersey a separate company known as the Lehigh Valley Coal Sales Co., with an authorized capital stock of $10,000,000, of which
5070 $6,060,800 was issued forthwith. The Lehigh Valley Railroad Co. declared a dividend in January, 1912, of 10 per cent. on its outstanding capital stock, this dividend amounting in the aggregate to $6,060,800. The preferred and common stockholders of the railroad company were given the privilege of subscribing to shares of the sales company to an amount equivalent to 10 per cent. of their holdings. By this method, in effect, the shares of the sales company were distributed to and among the shareholders of the railroad company. Thereupon, on March
5071 1, 1912, the Lehigh Valley Coal Co. entered into a contract with the Lehigh Valley Coal Sales Co. whereby the former agreed to sell to the latter all coal hereafter mined by it from all coal lands owned or leased by it, together with all coal it may purchase, the sales company agreeing to purchase and take all such coal at a price delivered f. o. b. railroad cars, at the breakers where the same is prepared, at, for all sizes above pea coal, a sum equal to 65 per cent. of the general average f. o. b. price
5072 of said sizes received at the water points at or near New York, between Perth Amboy and Edgewater.

"The situation is, therefore, that coal which is shipped over the Lehigh Valley Railroad is mined by the Lehigh Valley Coal Co., all of whose stock is owned by the railroad company, and is sold at the breakers to the Lehigh Valley Coal Sales Co., all of whose stock has been originally issued to and distributed among the stockholders of the railroad company pro rata, but which company has separate

officers from the railroad company, and separate directors, and whose stock may be sold by the stockholders without regard to their continued holding of stock in the railroad company. By this arrangement both the railroad company and the coal companies seem to have parted in good faith with title to the coal before transportation begins and it is claimed therefore that transportation is free from the prohibition of the commodities clause as construed by the Supreme Court in 213 U. S., 412. The question will be submitted to the court at an early day." 5073 5074

Q. And the report of the Attorney General, extract of which I have read in evidence, has to do with the organization of the Lehigh Valley Coal Sales Company and the discontinuance by the Lehigh Valley Coal Company of all the marketing of coal or the shipping of anthracite coal, does it not? A. Yes, sir.

Q. And you assumed that that would end further criticism by the Government? A. Yes, more particularly so since Mr. Johnson had approached the Department of Justice. 5075

Mr. Machen: I object to what Mr. Johnson has done unless you were present.

Mr. Warren: Go on and finish your statement.

The Witness: Because Mr. Johnson had, before the company was——

Mr. Machen: Were you present at the time you speak of, or did you get this information from Mr. Johnson? 5076

The Witness: From Mr. Johnson.

Mr. Machen: Then I object.

Q. You were advised by counsel what? A. I was assured by counsel, as the result of direct enquiry on my part as to how this matter would be viewed by the Government, that Mr. Johnson had approached the Department of Justice, had submitted in evidence the con-

5077 tracts that were to be entered into, the full plan of the company, and that the Department of Justice was disposed to take the view that this fully complied with all requirements of the law.

Q. Now, Mr. Smith, since March 1st, 1912, have you attended some, if not all of the meetings of the Directors of the Lehigh Valley Coal Sales Company? A. I have attended some, but not all.

Q. Will you tell us briefly how the business of that concern is managed and carried on, and in whose inter-
5078 ests? A. The business of that company is managed solely by the officers of the Lehigh Valley Coal Sales Company under the direction of the Board of Directors, and solely and entirely and exclusively in the interest of the stockholders of the Lehigh Valley Coal Sales Company.

Q. Is a single one of the directors of the Lehigh Valley Coal Sales Company a director of the Lehigh Valley Railroad Company? A. No, sir.

Q. Or has he been since the organization of the Lehigh Valley Coal Sales Company? A. No, sir.

5079 Q. What steps, if you know, have been taken to try to develop the market and further the business of merchandising anthracite coal, which is their business, as I understand it? A. So far as I am able to judge they have conducted their business on broad businesslike lines, with a due regard to the future development of their company, and in their own interest.

Q. Have you ever heard, at any Directors' meetings or otherwise, of any efforts at control by the Lehigh Valley Coal Company and the Lehigh Valley Railroad
5080 Company or any other outside concern, of the affairs of the Lehigh Valley Coal Sales Company? A. No, sir.

Mr. Machen: I object to it as calling for a conclusion of law.

Q. Have you ever heard of any efforts being made on the part of any outside concerns to control the affairs or limit the activities or enlarge them or change them in any way, of the Lehigh Valley Coal Sales Company? A. No, sir.

Q. Now, the Lehigh Valley Coal Sales Company made 5081
an application, did it not, to list its stock on the curb, so to speak, in New York? A. I believe they did.

Q. Well, you know that the stock is listed on the curb, as it is called, do you not? A. I do not know it. The president mentioned that matter at a meeting of the Board of Directors, and asked authority to make such an application. As I said before, I have not been present at all meetings of the Sales Company. Whether that was done or not I don't know.

Q. You are a stockholder of the Lehigh Valley Coal 5082
Sales Company? A. I am, yes, sir.

Q. You are not familiar with the changes in the stockholders of that company? A. I am not, no, sir.

Q. Nor with the personnel of its stockholders or their distribution throughout the country? A. No, sir, I am not familiar with that.

Q. Going back for just a moment to that circular of the railroad, and to the facts which followed the subscriptions to the stock on the part of the railroad stockholders and to the stock of the Sales Company, were 5083
they handled by the Railroad Company in any way? A. No, sir.

Q. They must have then been turned over either to the Sales Company or to its agent, somebody acting for them? A. Yes, sir.

Q. Then the railroad company would have no means of knowing which of its stockholders availed themselves of the opportunity to take stock in the Sales Company until they were advised by the Sales Company of such election by the stockholders of the Railroad Company, around or about March 1st, 1912? A. That is correct. 5084
The Lehigh Valley Railroad did not know until afterwards who had subscribed to the stock.

Q. And, of course, those whom it was advised did not, the Railroad Company paid the dividend direct? A. Yes, sir.

Q. In cash? A. Yes.

Q. Early in the present year did you have any correspondence with Mr. Frederic R. Coudert, at that time as I understand it, Special Assistant to the Attorney

5085 General, and engaged in preparing the present proceeding or the pleading for the present proceeding? A. Yes, sir.

Q. Did you extend to him every facility by way of furnishing all information he asked for? A. Yes, sir.

Q. I know that one of the Government's exhibits, I think it is 32, is a copy of a letter or a statement, which you furnished, and it says here "Note: Copy of statement furnished by Mr. Smith of the Lehigh Valley."

Mr. Machen: Major Warren, it gives me pleas-
5086 ure to state on the record, if you have no objection, that I understand indirectly from Mr. Coudert, that every facility was afforded to him by Mr. Smith in this enquiry.

Mr. Warren: That is all I want to show. Very much obliged to you.

Q. And the correspondence continued until Mr. Coudert said he had all he desired, or substantially that, didn't it? A. Yes, sir. I had several conferences with
5087 Mr. Coudert.

Q. And you practically told him all he asked you? A. Yes, sir.

Q. And answered all his enquiries? A. Yes, sir.

Q. Throughout the entire preliminary matters looking towards the organization of the Sales Company, there was every publicity given, was there not, to it, both by circulars and by advertisements and publications in the chronicles, to which I have called your attention, and in various other ways? A. Yes, sir.

5088 Mr. Warren: That is all.

Cross-Examination by Mr. Machen:

Q. There is one matter about which I think you gave inadvertently what I am sure was a wrong impression, and I want to ask you about that. When did Mr. Johnson tell you of this submission to the Department of Justice? A. At about the time of the launching of the Lehigh Valley Coal Sales Company.

Q. It was considerably after the formation of the Lehigh Valley Coal Sales Company? A. Mr. Johnson in-

formed me twice in regard to the matter; once was be- 5089
fore the company was organized, and doing business, of an informal talk he had had with the Department of Justice.

Q. Of an informal talk he had with the Department of Justice. Whom do you mean by "Department of Justice"? A. Why, it was given, but I cannot recall the names of the parties he saw at that time.

Q. It was not the Attorney General of the United States? A. I am not sure of that.

Mr. Boles: Was it Mr. Wickersham? 5090
The Witness. I don't recall that. I only remember the fact he had approached some officer.

Q. The fact he told you he had approached some officer or employe of the Department of Justice? A. Yes, sir.

Q. And he had some informal conversation? A. Yes, sir.

Q. With some person employed in the Department of Justice? A. Yes, sir. 5091

Q. Prior to the formation of the Lehigh Valley Coal Sales Company? A. Yes, sir.

Q. Now, you said that he had told you of some other interview or conversation or correspondence with somebody connected with the Department of Justice? A. That was at the time when we formally submitted the contracts and other papers, and it was after the organization of the company, and based upon which I understand Mr. Wickersham in his report to Congress referred to the fact that the Lehigh Valley Coal Sales Company organization seemed to meet all the requirements 5092
of the law under the commodities clause.

Q. But that he would have the question submitted to the court for decision? A. I don't remember his making such a statement as that. I remember that he arranged to have the case dismissed, the old commodities case, which had been hanging fire for a long while.

Q. In order to have a new case brought? A. I don't remember any new case being brought.

Q. Well now, isn't it a fact that this so-called formal submission that you have referred to arose in connec-

5093 tion with that case which was then still pending? A. The old case?

Q. And that the question arose whether that case should be proceeded with, and that then the papers were submitted to some person in the Department of Justice? A. Well, that is not my understanding of the matter. My understanding is as I have stated. It is true that we had to submit various papers and documents when it came to the question of dismissing the commodities case which, as I stated, had been started several years
5094 before the organization of the Lehigh Valley Coal Sales Company.

Q. It appears from the Government Exhibit No. 54, the docket entries in the commodities clause case, that on January 27, 1912, which was after the project for the formation of the Coal Sales Company had been started, an agreement was filed extending the time to take testimony; that subsequently stipulations of the same character were filed on March 29, 1912, June 8, 1912, August 21, 1912, and November 27, 1912, and finally on January 27, 1913, a little over a month after
5095 this report of Mr. Wickersham, which has been offered in evidence by the Coal Sales Company, a decree was signed dismissing the bill without prejudice. Now, it is a fact that these submissions or conversations with persons connected with the Department of Justice related to that suit? A. I don't so understand the case.

Q. Weren't they interviews or conferences between counsel employed on one side or the other in that case? A. That is not my understanding of the matter.

Q. But your only understanding is what Mr. Johnson
5096 told you? Your only knowledge is from what Mr. Johnson told you? A. Yes, sir.

Q. Was your information which was derived from Mr. Johnson in writing or oral? A. It was practically all oral in respect of this sales company. I had a great many interviews in the privacy of his office.

Q. Now, you are a director of the Coal Sales Company, are you not? A. Yes, sir.

Q. And you are vice-president of the Railroad Company? A. Yes, sir.

Q. As to the purchase of Coxe Brothers & Company and the Delaware, Susquehanna & Schuylkill in 1905, you stated that Mr. Alexander B. Coxe said that he had received an offer for these properties? A. Yes. 5097

Q. What was the amount of this offer? A. Substantially the same amount as we paid Coxe for the purchase of the Coxe Brothers & Company, Inc., property.

Q. By whom was the offer made? A. That I don't know.

Q. Did you know at the time? A. No, sir. Mr. Coxe refused to divulge his name.

Q. But said that the price was about the same as that which you ultimately paid? A. No, he did not say that. He said that he had received an offer for the property at a certain figure, and that he would prefer to sell the property at that figure to us rather than to this other party. 5098

Q. Well, was the offer which he told you about, according to the statement which he made to you or made in your presence, an offer for the purchase of both Coxe Brothers & Company and the Delaware, Susquehanna & Schuylkill Railroad? A. Yes, sir. 5099

Q. You don't remember the price? A. Yes, sir.

Q. What was it? A. $18,400,000.

Q. Do you know whether this other party was a railroad company or not? A. I do not.

Q. I suppose you have read Mr. Thomas' testimony in the former case against the Reading Company? A. I have not. If I did, it was a long time ago.

Q. Do I understand you to say, or Mr. Thomas to say, that the object of acquiring the Coxe Brothers, including both the Railroad and the mining companies, was to prevent the loss, or possible loss, of the tonnage? A. I stated that that was one object, not the only object, though. 5100

Q. Mr. Thomas testifies that the purchase of Coxe Brothers was due "To my efforts to secure and to retain to the Lehigh Valley Railroad the tonnage which belonged to it. Originally that tonnage was carried by the Reading Railroad. It was taken away by the Lehigh Valley by the building of the connection." Does

5101 your recollection agree with Mr. Thomas' in that respect? A. Substantially, yes.

Q. Mr. Thomas goes on as follows: "Mr. Alexander Coxe was a member of the Board of the Lehigh Valley Railroad. He came to me some months prior to the purchase and said that he thought of getting out of the business, that he had unexpectedly had a large offer for the property, but that in view of his connection with the road and his association with the owners, he would prefer to have them acquire it. He declined to name the
5102 man who made him the offer. Subsequent interviews between us convinced me it was a bona fide offer. Mr. Coxe was a gentleman, a man of wealth and reputation, and I had confidence in what he said. He made me the first offer. I went to our bankers and asked them if I could have a certain amount of money without disclosing the purpose. They told me I could. The result was that I negotiated the transaction, notified our people of what I had done and asked authority to go on and close the transaction, which I did. So far I had disclosed it to nobody outside of our own Finance Com-
5103 mittee. I took every pains to keep it quiet for fear I would lose it." Is that correct? A. That is correct to the best of my knowledge and belief.

Q. The next question is by Mr. Platt. "Q. And lose the tonnage" and Mr. Thomas adds, "And lose the tonnage. The Pennsylvania Railroad was carrying then the greater part of that tonnage west." Was that correct? A. I don't think that was entirely correct. There was a large amount of the tonnage. It was not the bulk of the tonnage, according to my recollection.

5104 Q. Mr. Thomas goes on "They made a demand for part of it, thought they ought to have it, thought it was not a fair deal for us to come in and buy the property, they carrying the coal out. I said that tonnage was on our land, and I proposed to have it. I maintained that proposition. I would have preferred not to have bought that property. I would have preferred to let Mr. Coxe remain there and run it, but I was not going to expose myself to the possibility of losing a large tonnage." A. I cannot confirm Mr. Thomas' testimony with respect to his interviews with any members of the Pennsylvania

Railroad Company. I only know about that from hear- 5105
say, and I was not present at any interview with any representative of the Pennsylvania Railroad.

Q. But you have testified on direct examination at considerable length to hearsay; suppose you give us hearsay now? A. I don't recall anything about the Pennsylvania Railroad matter except I know they were anxious to have all the tonnage they could get from the Coxe Brothers' mines, the same as they were from any other anthracite property they could possibly reach.

Q. Prior to the negotiations of the trackage contract 5106
about 1894, between the Lehigh Valley Railroad and the Delaware, Susquehanna & Schuylkill, the traffic of the Delaware, Susquehanna & Schuylkill and the product of the Coxe mines, used to proceed over the Philadelphia & Reading Railway, or Philadelphia & Reading Railroad, as it was then, did it not? A. I don't remember that. Did you say 1894?

Q. Yes. A. I was not connected with the Lehigh Valley Railroad in 1894, and I know practically nothing about its business affairs at that time.

Q. You stated in your direct examination that the ton- 5107
nage of the Delaware, Susquehanna & Schuylkill always had gone over the Lehigh Valley to tidewater? A. No. I testified that the tonnage from the Coxe mines had always gone over the lines of the Lehigh Valley Railroad at that time and had for some years previous to that time gone over the Lehigh Valley.

Q. But you did not mean to say that it had gone for all time since the construction of the Delaware, Susquehanna & Schuylkill over the Lehigh Valley? A. No.

Q. Now, this trackage contract was substantially re- 5108
newed wasn't it, about 1903 or 1904, a year or so prior to the purchase by the Lehigh Valley of Coxe Brothers & Company and the Delaware, Susquehanna & Schuylkill? A. That is my recollection.

Q. It had originally been made for twenty years, and was renewed, for I think twenty years more, wasn't it? A. I don't recall off-hand, but you have it in your exhibits, I think, somewhere.

Q. Do you know how much per annum the Lehigh Valley Railroad received from this trackage right? A. I don't recall.

5109 Q. You said that the acquisition of the Delaware, Susquehanna & Schuylkill was merely secondary. I suppose you meant that the primary object in the purchase was the acquisition of the Coxe Brothers' mines? A. No; I meant that the Coxe Brothers were by far the more valuable, and therefore, they were the main things which we were buying.

Q. You mean the Coxe mines? A. Yes. The D. S. & S. Railroad was in itself a very small and inconsequential affair, and we would have been just as willing to have bought Coxe Brothers & Company without the
5110 railroad except insofar as the D. S. & S. Railroad would serve as a branch line of tracks to reach the collieries.

Q. In other words, practically the whole purchase price was really paid for the property of Coxe Brothers & Company? A. Not at all.

Q. Why not? A. The purchase price was paid for Coxe Brothers & Company and the D. S. & S. Railroad Company and five or six water companies.

Q. But you said you did not want the Delaware, Susquehanna & Schuylkill Railroad? A. We did not care
5111 very much about the D. S. & S. Railroad because, as I have stated, we considered it a very inconsequential railroad as a railroad.

Mr. Boles: He also stated they had to take all or nothing.

Q. Wouldn't it have been a perfectly simple plan to have sent to each stockholder of the Lehigh Valley Railroad a check for his dividend and at the same time to have sent him a warrant entitling him to subscribe at
5112 par to a certain proportion of the stock of the Lehigh Valley Coal Sales Company? A. No, sir; that would have involved a considerable amount of work to have handled it in that way.

Q. Why? A. Because in that case we would have had to give an individual check to the order of each and every stockholder.

Q. Yes. A. We would have the risk of mailing it to each and every stockholder, and we would have had to get the warrant signed by each and every stockholder,

and we would have had to turn it over to whomever it 5113
was handling the stock subscriptions of the Lehigh Valley Coal Sales Company.

Q. So far as the risk of mailing the check is concerned, that is a risk you would take at every dividend declaration, isn't it? A. Yes. The risk we felt we were taking very largely in this matter would be that some stockholder might come some day and say that we had not given him due notification or advice in regard to the matter, and we put a clause in the advertisement to the effect that the mere fact that if he did not get a warrant from us that was not to act against the Lehigh Valley 5114
Railroad in any way, that he was hereby notified that he was to call and ask for the warrant if he did not get it by mail.

Q. There was no formal underwriting contract between Drexel & Company and the Coal Sales Company at the time of the issue of this stock? A. No, sir, not that I know of.

Q. In fact, they did it without executing any agreement whatever upon the part of the Coal Sales Company? A. I would not say that. The matter of any 5115
commission or expense was to be left in abeyance until after the organization of the Lehigh Valley Coal Sales Company.

Q. Well, was there a contract with them for a commission? A. There was not.

Q. I understood you to say no commission was paid them? A. No commission was paid them.

Q. They simply received their expenses? A. Yes, sir.

Q. The notice which was sent to the stockholders of the Lehigh Valley Railroad speaks of an underwriting 5116
syndicate organized by Drexel & Company? A. Yes, sir.

Q. Was that expression correct or not? A. That expression was correct, to the best of my knowledge.

Q. I thought you said that the stock was taken by Drexel & Company? A. Yes, sir.

Mr. Boles: I did not understand there was any syndicate?

The Witness: It was taken by themselves as representing a syndicate.

5117 Q. The syndicate who underwrote it for nothing? A. Yes, sir.

Q. Mr. Stotesbury, who is one of the Directors of the Lehigh Valley Railroad Company, is a member of the firm of Drexel & Company, isn't he? A. Yes, sir.

Q. At the time of this formation of the Lehigh Valley Coal Sales Company, was there any transfer to the Coal Sales Company of the Markle contract by the Coal Company? A. I don't recall just whether there was a formal transfer or not.

5118 Q. There was no consideration paid for it other than the consideration set forth in the written contract between the parties, a copy of which is filed with the bill? A. There was no specific consideration for any one contract or one lease or any one thing. It was general under the whole contract.

Q. The only consideration that passed from one company to the other, is that set out in the contract, a copy of which is filed with the petition marked Exhibit No. 3? A. The sale of coal also, and receiving the amount of cash called for.

5119 Q. You testified as to a desire on the part of the Coal Company that the Sales Company should continue certain markets which were for the time being at least unprofitable? A. Yes, sir.

Q. Will you point out to me any provision in the contract Exhibit No. 3, which requires the Coal Sales Company to continue in any such markets? A. There is a general clause in there that they will use their best endeavors to increase the sale of Lehigh Valley coal.

Q. And that you construe as obliging them to continue

5120 in unprofitable markets? A. Yes.

Q. That is the only provision?

Mr. Warren: That says they must develop the markets.

Q. The only provision, at any rate, on the subject, is that set out in the contract? A. Yes, sir.

Q. Did you at the time of the formation of the Coal Sales Company consider the possibility of the sale of the coal mines outright by the Coal Company? A. I

had that matter in mind, as did our counsel, but it was 5121
impossible to effect a sale of the mines if such a sale was necessary or advisable, because all of the property of the Lehigh Valley Coal Company is pledged not only under its own mortgage, but the stock of the Lehigh Valley Coal Company is likewise pledged under the general consolidated mortgage of the Lehigh Valley Railroad Company.

Q. Yes, but the Lehigh Valley Coal Company could have sold its property subject to its own mortgage, couldn't it, apart from—— 5122

Mr. Warren: (Interrupting.) I object to that question, first because counsel is ignoring contracts which especially prohibits such sales and is asking the witness to testify as to matters which are in writing and because it is immaterial and incompetent anyway.

Mr. Wheaton: Every one of those leases produced, which you have not read, prohibits absolutely that, without the consent of the lessor first being obtained. 5123

Q. I understood you to say that the rentals to be paid to the Coal Company by the Coal Sales Company were fixed at such price as would yield net 4% on the value of the property, is that correct? A. I did not so state, no, sir.

Q. Well, I misunderstood you. Is that true? A. It is.

Q. And do you consider that a fair return? A. Yes.

Q. Does the Lehigh Valley Coal Sales Company ship any of this coal over any other road as an initial car- 5124
rier? A. I am not familiar with the shipping and selling relations of the Lehigh Valley Coal Sales Company since its organization.

Q. As a director of the Lehigh Valley Coal Company —you are a director? A. I am a director of the Lehigh Valley Coal Co.

Q. As such director, how did you qualify as stockholder in the Company? A. The Girard Trust Company, Trustee of the Lehigh Valley Railroad general

5125 consolidated mortgage, owning the entire common stock of the Lehigh Valley Coal Company, has qualified me with the necessary amount of shares.

Q. By transferring the shares into your name. A. Yes.

Q. What did you do with the certificates? A. Gave them back to the Girard Trust Co., trustee.

Q. Endorsing a transfer of them in blank? A. Yes.

Q. Mr. William H. Moore is one of the directors of the Lehigh Valley Railroad Company, is he not? A.
5126 Yes.

Q. Is he connected with the firm of Moore & Schley? A. No, sir. The Mr. Moore of Moore & Schley, died about ten years ago.

Q. Is the Mr. Paul Moore, who is a director of the Lehigh Valley Coal Sales Company, I believe, related in any way to Mr. William H. Moore? A. I understand he is.

Mr. Warren: Objected to as being quite immaterial, there being no law that controls relation-
5127 ship or proves the government's case by paternity.

The Witness: His son.

Q. You said that in fixing the price of coal to be paid by the Coal Sales Company, account was taken, or rather, that it was very difficult to take account of the amount of degradation; what did you mean by that? A. I mean that large sizes of coal will be shipped constantly to a certain stocking point, and some of it will be picked
5128 up, and some more will be shipped in, then taken out and so on. We will assume that we send out what is known as chestnut size that will be broken down in handling so that perhaps of a hundred tons of chestnut coal which goes in, ultimately there will only be picked up and carried out the stock 95 tons of chestnut; the rest will be broken down to dust. That is worth considerably less money than the chestnut coal was. Further than that, there is occasionally a theft of coal, coal lost in transit, and the result is that when we come to clean up a pile of coal—large piles of coal—we find

in the majority of cases that where our books show there 5129
ought to be perhaps a 100,000 tons, there will be several thousand tons less, dependent upon the length of time which has elapsed since it was last cleaned up.

Q. Is there a degradation of this kind merely in consequence of transportation? A. There is very little degradation in the actual movement of the coal in carloads; most of the degradation takes place at the stocking yards operated by a coal company who is receiving and handling anthracite coal.

Q. About how much does the degradation amount to 5130
on the average? A. It varies considerably. It depends upon the kind of plant and the kind of machinery they use, and I would not want to offhand give you any figures whatever.

Q. I mean a maximum and minimum? A. It might go up to 5%.

Q. And it might fall to—— A. It can fall to a fraction of 1%, dependent entirely, as I have said, upon the character of machinery used in handling the coal, and the care with which it was handled.

5131

Mr. Warren: And the quantity of coal handled.

The Witness: Of course, that would come in.

Mr. Boles: This degradation comes in the handling.

The Witness: Yes, in carrying it around and dumping it, and picking it up, as the market takes it.

Q. You said that the Lehigh Valley Railroad Company never gave any preferences or privileges to the Lehigh Valley Coal Company? A. Yes. 5132

Q. Do you know what the arrangement between the two companies as to telegraph service is? A. It is covered by a formal contract by which we use part of their wires and they perform certain services for us.

Q. When was this contract executed? A. I do not recall, some time ago.

Q. A year or so ago? A. I do not recall the exact date. This was a mutual arrangement existing for a great many years.

5133 Q. What was that mutual arrangement? A. That we might use certain of their wires and they use certain of our wires, each maintaining their own wires.

Q. Cannot you explain that a little more in detail? A. I am not familiar with the details of it.

Q. You say certain of their wires; do you mean to say the coal company furnished telephone service to the railroad company, and the railroad company furnished telegraph service to the coal company? A. No, it was not as specific as that. The Lehigh Valley Coal Company
5134 had certain wires which ran from certain collieries along our right of way to certain other collieries, and we used their wires and they used ours. We would interchange the different facilities, such as is common, you understand, among all telegraph and telephone companies, thus avoiding capital expenditures for duplicating the wire service.

Mr. Boles: That contract, Mr. Machen, is on file with the Interstate Commerce Commission.

Mr. Machen: This arrangement was prior to
5135 the contract, wasn't it?

Mr. Boles: A contract put in writing, which previously existed by verbal agreement.

Mr. Machen: The contract is quite a recent contract, isn't it?

Mr. Boles: I think it is about two years old. I made it and I remember it very well.

Re-Direct Examination by Mr. Warren:

Q. Mr. Machen asks you whether it would have been
5136 a very simple thing to have issued a dividend check to the 7,000 odd stockholders of the Lehigh Valley Railroad, and accompanying that check with a blank warrant, or subscription blank, for the stock in the Lehigh Valley Coal Sales Company. Now, those stockholders of the railroad were scattered almost all over the country, were they not? A. They were.

Q. And a great many of them, about 20,000 shares abroad? A. Yes.

Q. Might not confusion have arisen in case of your failure to hear from the stockholders prior to March 1st so as to have prevented you from effecting the transfer of the Sales Department of the Lehigh Valley Coal Company to the new concern? A. There certainly would have, because not enough time elapsed after the payment of the dividend for the stockholders who were far away from the main office of the corporation, at Philadelphia, to have gotten the warrant, signed it, and returned it in time. 5137

Q. Now, the Government says in its petition in this case, and I cannot believe that such a gratuitous assumption is really meant, but they say this contract, referring to the contract of March 1st, was not a bona-fide transaction between separate corporations, first of all in the negotiations which led up to the making of that contract. You, so far as you participated in that, were representing one company, the Lehigh Valley Coal Company, and only the Lehigh Valley Coal Company. What have you to say in reference to this assumption, that the contract in question was not a bona-fide transaction, between separate corporations? A. It was a bona-fide transaction in every respect, and the new corporation, the Lehigh Valley Coal Sales Company, was represented at the conferences by Mr. Skeele and Mr. Wilson, on all matters, and at times by Mr. Evans. 5138 5139

Q. And were there not disputes between the representatives of the Coal Company and the Sales Company, back and forth, as to various propositions, suggested on the one side and the other, and that there was consideration given to both sides? A. There was, and the conferences extended for a considerable length of time. 5140

Q. Now, the Government further says the purpose of the Lehigh Railroad Company and those who controlled in organizing Lehigh Valley Coal Sales Company was to use the latter—meaning the Coal Sales Company—as a mere instrumentality for retaining under their protection, for their profits—meaning the railroad—the monopoly, which they had acquired of the sale of anthracite coal, from mines tributary to the railroad, and this has been accomplished through the arrangement as

5141 above described, referring to the contract of March 1st, 1912, and the resolutions preliminary to the organization of the Sales Company. Now let me ask you a question about that. Did the Lehigh Valley Railroad, to start with, organize the Lehigh Valley Coal Sales Company? A. No, sir.

Q. Or have anything to do with its organization? A. No, sir.

Q. Within your knowledge, was there ever any monopoly by the railroad in matters of transportation, even
5142 of the coal from mines tributary to the railroad; in other words, does your railroad own, or has it ever owned, all the coal that is produced along the lines of the railroad? A. No, by no manner or means.

Q. It is again suggested by the Government that the Sales Company is and must always be subservient to the will and direction of those who control the railroad? A. That is not true.

Q. Was it the purpose of the railroad, or did you ever hear of any such purpose suggested by any official of the railroad in any way, shape or form, that it was their
5143 desire or purpose in organizing the Lehigh Valley Coal Sales Company, which they did not organize, by the way, as a mere instrumentality for their maintaining the monopoly? A. No, sir.

Q. Any such thought as that ever held? A. No; in fact it was considered of the organization of the Lehigh Valley Coal Sales Company, with separate stockholders, that there would be a gradual breaking away of the interests in common, even though there might be an interest in common at the actual date of organization.
5144 That I am told has been the case, because when Mr. Coudert, representing the Department of Justice in this matter, asked me for a list of stockholders, and I asked Mr. Wilson if he would not voluntarily furnish me with a list to give to Mr. Coudert as a matter of courtesy, I noticed that there had been a great deal of drifting of the stock out of the name of a great many people who had originally subscribed at the date of the organization of the Company.

Q. I don't know whether you know it or not, but if you do, will you tell if it is not a fact that the Lehigh

Valley Coal Sales Company today handles a million 5145
tons and odd, and some coal which is purchased from various concerns, outside of the coal which it purchases from the Lehigh Valley Coal Co.? A. I cannot tell you the amount of coal which it handles from outside concerns, but I do know that Mr. Wilson, as President of the Lehigh Valley Coal Sales Co. has entered into various contracts with other producers of anthracite coal other than the Lehigh Valley Coal Company for the purchase and sale, and sale on commission of such other parties' coal.

Q. What have you to say as to the assertion that the 5146
contract between the Coal Company and the Sales Company necessarily hinders and prevents the railroad from freely fixing its rates for transporting coal according to recognized and legitimate standards? A. I cannot understand possibly what is meant by that allegation.

Q. The government has failed to enlighten us so far in this action. What have you to say of the allegations that it introduces a factor which could not be considered consistently with the rights of the public, that is, this contract for the sale of the production of the 5147
Lehigh Valley Coal Company at its mines, ending all its business there. It is a factor which could not be considered consistently with the rights of the public and tends to keep rates unduly high? A. I cannot possibly understand what is meant by that.

Q. Is it a fact? A. No, sir.

Mr. Machen: I think I ought to note an objection to that question.

Q. Do you know what proportion of the Lehigh Val- 5148
ley Coal Sales Company coal comes to harbor points, that is to say, of the gross anthracite tonnage which is handled by it? A. I only know this, I know it is a small percentage of their gross anthracite sales.

Q. The 65 per cent. contract therefore, made between the Lehigh Valley Coal Company and the Lehigh Valley Coal Sales Company for the sale of all its production, at the mines, subject to some reduction for supply coal and sales to the employees, but practically

5149 speaking for the product of the collieries, assuming it were to sell 100 per cent. of its production, if a small proportion of that 100 per cent. comes to tide, the balance then goes into the various states of the United States, doesn't it? A. Yes.

Q. And Pennsylvania, among the various states? A. Yes.

Q. So that the fixing of the price to be paid at 65 per cent. of the average price at tide, is simply a method that you understand is in vogue for fixing the price for
5150 the sale of coal, not for the sale of the coal covered by the contract, but for the payment of the coal covered by the contract? A. It is only a unit to be used in arriving at a monthly settlement for the coal sold to the Sales Company.

Q. It is hardly necessary for me to ask, adopting another government expression, as to who fixes the prices of the coal that is merchandised by the Lehigh Valley Coal Sales Company, but I am going to ask it; in other words, the Lehigh Valley Coal Sales Company is selling coal, isn't it? A. Yes.

5151 Q. It fixes the price of the coal it sells, doesn't it? A. It fixes its own price, yes, sir.

Q. Does anybody else have anything to do with fixing the price? A. Never, that I ever heard of.

Q. Does the Lehigh Valley Railroad have anything to do with it? A. Nothing whatever.

Q. Do you know of anybody having anything to do with it? A. Never.

Q. Or having any right to have anything to do with it? A. No; or attempting to exercise such right if they
5152 might have it.

Q. Is a single director of the Lehigh Valley Coal Sales Company other than yourself a director of the Lehigh Valley Coal Company? A. No, sir.

Q. I asked you that about the railroad company but not about the coal company? A. Yes.

Q. So far as the coal company was concerned, the purpose of the contract was to enable it to run its business in the State of Pennsylvania absolutely and in toto, wasn't it? A. Yes.

By Mr. Boles: 5153

Q. When Mr. Thomas testified in the old Reading case that he took pains not to disclose the offer of Alexander B. Coxe to sell the stock of Coxe Bros. & Co., and Delaware, Susquehanna & Schuylkill Railroad and the Water Companies, he could not by any possibility have meant that he did not disclose the matter to you? A. No.

Q. Because as a matter of fact, he did disclose it to you? A. He told me. I was present at all the executive committee meetings because I was at that time Assistant Secretary and attended in my official capacity at 5154
such executive meetings. In fact, anything Mr. Thomas heard bearing upon the subject he told me about, and talked over all the features with me. I understand from Mr. Coxe himself that he did not feel at liberty to divulge the name of the parties who had approached him for the purchase of the so-called Coxe properties.

Q. Then he could not have meant you because you personally were present at some of the interviews with Alexander B. Coxe? A. Yes.

Q. As to the contract for the use of the Company's 5155
wires, is it your understanding that the railroad uses a great many of the coal companys' wires in the mining regions for its own railroad purposes? A. Yes.

Q. And do you know whether the balance of use is by the railroad of the coal company wires, or by the coal company of the railroad wires? A. I don't know.

Q. You have testified as to various matters in respect to the Lehigh Valley Coal Company; did all the matters to which you have testified come to your knowledge when you were present at the meetings of the Board of the 5156
Lehigh Valley Coal Company? A. Generally, yes.

Q. And when you testified on matters relating to the Lehigh Valley Coal Sales Company you acquired your knowledge at the meetings of the Board of the Lehigh Valley Coal Sales Company? A. Yes.

By Mr. Machen:

Q. Of course, before the formation of the Coal Sales Company, the coal company made a much greater use

5157 of the telegraph wires than it does now didn't it? A. I don't so understand the case.

Q. I should have supposed that prior to that time the Coal Sales Company being engaged in marketing coal throughout the country, or along the lines of the Lehigh Valley Railroad, would have had frequent occasions to communicate with agents, etc. A. I never heard of the Lehigh Valley Coal Company using the wires for any such purpose as that.

Q. When you speak of the small proportion of the
5158 coal of the Coal Sales Company going to tidewater at New York, what do you mean by "small proportion"; do you mean one per cent., ten per cent., twenty per cent. or thirty per cent.? A. I certainly do not mean one per cent. or ten per cent., but I mean certainly less than half of their business.

Mr. Warren: In fact it is less than twelve per cent., Mr. Smith?

The Witness: Well, I don't recall the figures. I haven't had anything to do with the sale of coal.

5159 Q. Does the Lehigh Valley Coal Company undertake as an independent corporation to watch the performance by the Coal Sales Company of the covenants contained in the agreement of March 1st, 1912, which is filed with the petition? A. The proper officers of the Lehigh Valley Coal Company see that the covenants in that contract by the Lehigh Valley Coal Sales Company, so far as they relate to matters under their jurisdiction, are properly performed.

5160 Q. And yet you say that the Lehigh Valley Coal Sales Company has bought and sold a million tons a year of coal—of anthracite coal—from other sources than the Lehigh Valley Coal Company? A. I did not testify as to the amount of coal. I testified that I understood that the president of the Lehigh Valley Coal Sales Company had on behalf of his company entered into contracts with other producers than the Lehigh Valley Coal Company for the purchase of their coal, or else entered into contracts for the sale of coal on a commission basis.

Q. Anthracite coal? A. Anthracite coal; and to some 5161
extent bituminous coal, I understand.

Q. Then I call your attention to the following clause in the contract of March 1st, 1912: "So long as the mining company—that is the coal company—is ready and willing to deliver to the Sales Company coal under this contract, Sales Company shall sell no other coals or fuel for itself or for any other purpose outside of that which will require to be sold to comply with the terms of the existing hereinbefore recited sales agency and other sales contracts of mining company." Now, has 5162
any officer of the Board of Directors of the Coal Company protested against that violation of that covenant by the Coal Sales Company?

Mr. Warren: I object to the question; there is no proof of any violation of the covenant or pretense of such proof either.

A. Lehigh Valley Coal Company has no formal knowledge of any violations of any covenant.

Q. Have you ever indicated to the Board of Direc- 5163
tors of the Coal Company, or have the Board of Directors of the Coal Company derived any knowledge from any other source of the fact that the Coal Sales Company is dealing in anthracite coal—anthracite and bituminous coal?

Mr. Warren: I object to that question. There is no proof of their violating that contract in any respect with reference to that matter, and the counsel for the Government is basing his question upon an assumption that is not warranted 5164
by the evidence. The contract itself expressly reserves to the Sales Company the right to carry out certain contracts; and, further, our answer in this case distinctly discloses the parties with whom we are in business as vendees of anthracite coal as well as commission agents therefor.

A. I have not indicated to the Board of Directors or to the Lehigh Valley Coal Company any hearsay knowl-

5165 edge that the Lehigh Valley Coal Sales Company is making any purchases of other anthracite coal.

Q. What was the date of incorporation of the Lehigh Valley Coal Sales Company?

Mr. Warren: January 22nd, I think is the date; I am not absolutely certain.

A. It is in the record somewhere, isn't it?

Mr. Warren: You offered the minute books which I think show it.

5166 Mr. Machen: Then I will withdraw that question.

George Miller, recalled on behalf of the Lehigh Valley Railroad Company.

Direct Examination by Mr. Boles:

Q. Mr. Miller, have you prepared a statement showing the total production and shipment of anthracite coal
5167 from collieries tributary to the lines of the Lehigh Valley Railroad Company for the year ending June 30th, 1913, the parties to whom sold at the mines, or if not sold at the mines, to whom sold elsewhere, the amount of the production purchased by the Lehigh Valley Coal Sales Company, the amount of tonnage used by the colliery, the amount of tonnage sold at the colliery or breaker to public team deliveries, the tonnage shipped via the Lehigh Valley Railroad as originating carrier, the tonnage shipped via other lines as originating car-
5168 rier from each of said collieries and the name of the carrier; the total shipment from each colliery and how much was Lehigh Valley Railroad supply coal and how much was revenue tons? A. Yes.

Q. Is this a copy of the statement? (Showing witness paper.) A. That is a copy of the statement and includes all the shippers except those that are marked with a star here, for which we were unable to obtain the data. That is, collieries owned by G. B. Markle Company, Pardee Brothers Company, and A. M. Wyman.

By Mr. Machen: 5169

Q. Was this statement prepared from the records of the railroad company?

The Witness: No, sir, not entirely.

Mr. Machen: Or of the Coal Company?

The Witness: It was prepared from data obtained from operators.

Q. Just tell what you did in order to get it? A. I went to nearly all of the collieries in the Wyoming region. 5170

Q. You personally? A. Personally; went to nearly all of the collieries in the Wyoming region and obtained from them or from their general office the information. Some of it was obtained in the Lehigh region by telephone because the collieries were too far removed to obtain the direct information. The figures here were given to me by the operators as representing the total of their output and the distribution of it.

Q. As to the remaining collieries did you get the information from the general auditor of the Lehigh Valley Coal Company? A. The general auditor of the Lehigh Valley Coal Company for those collieries which the Lehigh Valley Coal Company is operating. 5171

Q. Is this statement a correct statement from the data you collected? A. It is.

Mr. Boles: I offer the statement in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 52.**

Q. Mr. Miller, have you prepared a statement showing the distribution of anthracite transported from the collieries on the line of the Lehigh Valley Railroad to the various connecting lines connecting with the Lehigh Valley Railroad and the amount of gross tons delivered to the various connecting rail and water lines? A. Yes, sir. 5172

Q. Is this a copy thereof? (Showing witness paper.) A. Yes, sir.

Q. Are the figures thereon shown, correct? A. Yes, according to the records of the railroad company.

5173 Mr. Boles: I offer the statement in evidence.
(Marked **Lehigh Valley Railroad Company Exhibit No. 53.**)

Q. I show you a statement marked for identification Lehigh Valley Railroad Company Exhibit No. 54 and entitled "Chart showing anthracite collieries in operation during 1913, their location, tonnage, track connections, etc.," and I will ask you whether the column thereon as to the net tons shipped by the Lehigh Val-
5174 ley Railroad for the year ending June 30th, 1913, correctly represents what it purports to represent? A. Yes, the figures on that statement will agree with the figures here. (Indicating Exhibit No. 52.)

Q. Mr. Miller, Government Exhibit No. 33 shows a figure of 82.09, on page 30 of the petition, opposite the year 1913; what does that figure represent? A. That 82.09 per cent. was obtained by taking the collieries, the output of the collieries that were operated by the Lehigh Valley Coal Company and from which the Lehigh Valley Coal Sales Company obtained coal as well
5175 as the purchased coal of G. B. Markle Company, and the railroad company's supply coal also.

Q. Does it include the Markle shipments? A. It does.

Q. The petition in this case states that that figure does not include the Markle shipments, is that correct? A. No.

Q. Is it correct for any of the years? A. It is not.

Q. Is it true for 1912? A. It is not.

Q. It included Markle in 1912? A. It included Markle, yes, sir.

5176 Mr. Warren: And included Lehigh Valley Coal Sales Company?

The Witness: Yes.

Q. Have you since found that the figure 82.09 is incorrect? A. I have.

Q. What should it be? A. Should be 79.95.

Q. And why? A. Because the shipments from the Mid Valley colliery, amounting to 298,270.13 were included as a part of purchased tonnage.

Q. That is the tonnage purchased by the Lehigh Val- 5177
ley Coal Sales Company? A. Yes, sir.

Q. And you subsequently found that the Mid Valley tonnage was not purchased by the Lehigh Valley Coal Sales Company during that year? A. It was not as so stated by the shippers themselves to me.

By Mr. Warren:

Q. Does this figure of 82.09 the year 1913, and 82.65 in the year 1912, include any supply coal? A. Yes, it does.

Q. The Lehigh Valley Coal Sales Company is not a 5178
shipper, of course, of any supply coal which the Lehigh Valley Coal Company furnishes for the Lehigh Valley Railroad engines? A. Not directly from the collieries.

Q. That is what I mean. A. No sir.

Q. If any such supply coal is purchased from the Lehigh Valley Coal Sales Company, or, rather, state it this way—if any coal which the Lehigh Valley Railroad Company uses that belong to the Lehigh Valley Coal Sales Company it buys it, don't it, from the Sales Company? A. Yes, sir. 5179

Q. So that when you are talking about shipments of the Lehigh Valley Railroad, as the Government is attempting to do upon page 60 of the petition, the figures are incorrect, not only because they include Lehigh Valley Coal Sales Company coal, but because they also include supply coal—they do, do they not? A. The figures in which those percentages were based include the supply coal.

Q. And the Mid Valley coal also? A. Yes, neither of which were shipped by the Lehigh Valley Coal Sales 5180
Company.

Q. And neither of which were shipped by the Lehigh Valley Coal Sales Company. They did not ship any coal after March 1st, 1912? A. That is right.

HEARING ADJOURNED TO JULY 22ND AT 10 A. M.

5181 New York, July 22, 1914.

Hearing resumed pursuant to adjournment.

APPEARANCES:

THURLOW M. GORDON, ESQ., AND ARTHUR W. MACHEN, JR., ESQ., on behalf of the Petitioner.

E. H. BOLES, ESQ., on behalf of the Lehigh Valley Railroad Co., *et al.*

EVERETT WARREN, ESQ., on behalf of the Lehigh Valley Coal Sales Company.

5182 F. W. WHEATON, ESQ., on behalf of the Lehigh Valley Coal Company, *et al.*

SILAS W. HOWLAND, ESQ., on behalf of the Girard Trust Company, as trustee.

George Miller, recalled.

Cross-Examination by Mr. Machen:

Q. Does the total figure covering tonnage shipped via
5183 Lehigh Valley Railroad as originating carrier in your Lehigh Valley Railroad Exhibit No. 52, check with the figures given in the Lehigh Valley Railroad Company's annual report to the Interstate Commerce Commission for the number of tons of anthracite coal originating on the line of the Lehigh Valley Railroad? A. No, sir, not in its entirety.

Q. What is the explanation of the difference; what is the difference and what is the explanation of it? A. The difference is approximately 50,000 tons.

Q. This gives the exact figures. In the first place, are
5184 these gross tons or net tons on this Lehigh Valley Railroad Exhibit No. 52? A. Gross tons.

Q. And the figure given in the report to the Interstate Commerce Commission is net tons? A. Yes.

Q. What is that changed to gross tons, have you that? A. It makes 13,935,331 tons and six one hundreds weight.

Q. According to Exhibit No. 52; now, what is that net tons? A. That is 15,607,571.01. You understand

that these figures include the supply coal, while the 5185
figures in the annual report are revenue tons.

Q. If you deducted the supply coal would the balance check with the figures given in the annual report to the Interstate Commerce Commission? A. Not in its entirety, no, sir.

Q. Why not? A. These figures cover the shipments of coal from the collieries located on the Lehigh Valley Railroad only; the figures for the Interstate Commerce Commission include the miscellaneous revenue tons as well as the tonnage received from connecting lines. 5186

Q. I am speaking of the figures in the report to the Interstate Commerce Commission for anthracite coal originating on the line of the Lehigh Valley Railroad? A. Oh, I beg your pardon.

Q. You remember the reports to the Interstate Commerce Commission discriminate between coal originating on the line of the Lehigh Valley Railroad and coal received from connecting carriers? A. The total would be 14,720,106.11 tons instead of 15,607,000, which includes the supply coal.

Q. That is gross tons? A. That is net tons. 5187

Q. Of tons originating on the line of the Lehigh Valley Railroad? A. Yes.

Q. The figures in the report given to the Interstate Commerce Commission for the year ending June 30th, 1913, of the tonnage of anthracite coal originating on the line of the Lehigh Valley Railroad are 14,679,793 net tons of revenue freight; what explanation have you to give for the difference? A. These figures are in excess because they are the tonnages furnished in nearly every case by the shipper and are based upon the 5188
amount of production. In other words, the coal may be loaded in cars and be taken into the colliery's production for a certain period, but not moved by the Lehigh Valley Railroad from the colliery to their billing point until afterwards, and which may throw a considerable volume of tonnage into the following month.

Q. Then the figures on this report, Lehigh Valley Railroad Exhibit No. 52, are not taken from the Lehigh Valley Railroad records, but on the figures in that particular colliery? A. No, sir.

5189 Q. Are the figures in the extreme right hand column of the Lehigh Valley Railroad Exhibit No. 52, namely, numbers of revenue tons of anthracite coal taken from the records of the Lehigh Valley Railroad Company? A. Yes.

Q. Didn't you testify in your former examination when called as a witness for the Government that the figures given on these tables showing the anthracite coal originating at points not shipped over the Lehigh Valley Railroad for the year ending June 30th, 1913, marked
5190 Government Exhibit No. 105, included the supply coal? A. I believe I did. I don't think the revenue tons were separated there. That included the supply coal. I think I worked out the averages on that and reduced it to net tons.

Q. Are the figures taken from the third column, from the right hand side on Lehigh Valley Railroad Exhibit No. 52, the total tonnage taken from the records of the Lehigh Valley Railroad Company? A. Yes.

Q. Will they check with the figures given in Exhibit No. 105 which was filed with your previous testimony?
5191 A. I think they do, yes.

Mr. Boles: I offer in evidence this statement showing the high and low prices of Lehigh Valley Railroad stock for the years 1863 to 1913.

(Received and marked **Lehigh Valley Railroad Company's Exhibit No. 55.**)

Mr. Machen: I have no objection to admitting that the Secretary of the Philadelphia Stock Exchange, if called as a witness, would testify that these figures correctly show the range of
5192 prices of the common stock of the Lehigh Valley Railroad Company for the years 1863 to 1913, both inclusive, arrived at for the years 1863 to 1878, both inclusive, from the bid and offered price for the stock each day on the Philadelphia Stock Exchange. That is to say, the high figures showing the highest bid price for the stock during each year and low figures showing the lowest asking price on the stock during each year, as quoted on said Stock Exchange, and for the years 1879

to 1913, both inclusive, from the highest and lowest sale prices made each year on the Philadelphia Stock Exchange. 5193

Mr. Boles: Mr. John C. Colehower, Assistant Secretary and Treasurer of the Philadelphia Stock Exchange, testified before the Interstate Commerce Commission that this statement shows between the years 1863 and 1878 the highest bid price and the lowest asked price each year, and for the period from 1879 to 1913 the actual high and low sales prices.

5194

Note.—It is admitted by counsel for the Government that if he were called in this case he would testify to the same effect.

Mr. Warren: I offer in evidence Lehigh Valley Coal Sales Company Exhibit No. 1, having been identified by Mr. Baird when a witness on the stand under cross-examination.

Received and marked as **Lehigh Valley Coal Sales Company Exhibit No. 1.**

Mr. Warren: I also offer in evidence Lehigh Valley Coal Sales Company Exhibit No. 2, being identified during the Government's case. 5195

Also offer in evidence Lehigh Valley Coal Sales Company Exhibit No. 4, the cover of the time table of Lehigh Valley Railroad Company in effect at the present time.

Cross-Examination by Mr. Machen:

Q. Have you completed the preparation of the table which was requested of you when you were called as a witness for the Government covering the anthracite coal originating on and shipped over the Lehigh Valley Railroad during the year ending June 30th, 1907, subdivided in the same manner as Government Exhibits No. 104 and 105? A. The table was prepared and transmitted through the usual channels. 5196

Q. Is this table which I now hand you a copy of the paper now in question? A. It is, yes, sir.

Mr. Machen: I ask that this be marked as **Government Exhibit No. 129.**

5197 So marked and filed in evidence with the Examiner.

Mr. Boles: I offer in evidence statements showing the shipments of anthracite coal over the various coal carrying railroads named thereon for the years 1896 to 1913, inclusive, which were taken from the record in the new Reading case at page 670.

Marked **Lehigh Valley Railroad Company Exhibit No. 56.**

5198

Robert S. Dousman, called on behalf of the Lehigh Valley Railroad Company, being first sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. You are an officer of the Lehigh Valley Railroad Company? A. Yes, sir.

Q. What position? A. Auditor of Traffic.

Q. Does your department supervise the auditing of
5199 all the traffic on the Lehigh Valley Railroad? A. It does.

Q. You supervise all waybills and other documents that relate to the transportation of all business of the company? A. Yes.

Mr. Boles: I offer in evidence a statement showing for the fiscal years 1855 to 1913, the tons of anthracite coal and the revenue thereon, transported by the Lehigh Valley Railroad Company for each year, and including from
5200 the year 1872 to 1913, bituminous coal and the revenue, because during most of the time the revenue was not kept separate. This statement was prepared here in my office from the annual reports of the Railroad Company and is correct.

Marked **Lehigh Valley Railroad Company Exhibit No. 57.**

Q. Mr. Dousman, how long have you been in your present position? A. Eleven years the first of May last.

Q. Is there in your department a record known as a 5201
rent roll? A. Yes.

Q. What does it show? A. It shows the list of the property, land, structures or otherwise owned by the company leased to various persons.

Q. And does it show the dates when leases are cancelled? A. Yes.

Q. If cancelled? A. Yes.

Mr. Machen: Is this all leases or only leases of trestles?

The Witness: Everything; all leases which we 5202
executed.

Q. I show you a statement entitled "List of lessees of trestles showing dates of lease and dates vacated," and will ask you whether that was prepared under your direction? A. Yes, sir.

Q. Is it correct? A. Yes, sir.

Q. Down to what date? A. Prepared within the last three or four days.

Q. Do the names thereon shown of lessees appear in the Government's petition in this case, page 52, 53, 54 5203
and 55? A. That is the record from which this was prepared.

Mr. Machen: Your list was prepared from the list in the petition?

The Witness: In other words, there may have been other leases vacated during that time, but if they were not on this record they were not included there.

Q. And all the leases appearing in the Government's 5204
petition which have been cancelled up to within the last few days appear in this list which I show you? A. Yes, sir.

Mr. Boles: I offer the statement in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 58.**

Q. I show you a statement entitled "Lehigh Valley Railroad revenue per ton per mile on merchandise and coal separately from Hazleton, Pa., and Wilkes-Barre,

5205 Pa., for various points, fiscal year ending June 30th"; was that statement prepared in your office? A. Yes, sir.

Q. Is it correct? A. Yes, sir.

Mr. Boles: I offer the same in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 59.**

Q. I show you again, Mr. Dousman, the list of lessees contained on pages 52 to 55, both inclusive, in the Government's petition in this case, and I ask you whether it is not the fact that a large number of those lessees re-

5206 ceived anthracite tonnage from various shippers other than the Lehigh Valley Coal Sales Company? A. Yes, it is a fact.

Q. And have been so receiving such tonnage for a long time past? A. Yes, sir.

Q. Take, for instance, the first point, Allentown; what can you say as to the lessees or consignees shown at that point? A. I think if my recollection serves me, that nearly every trestle in Allentown has received coal from shippers other than the Lehigh Val-

5207 ley Coal Sales Company.

Q. Anthracite coal? A. Anthracite coal, yes.

Q. And how about Jersey City? A. There is one large receiver in Jersey City whose entire stock comes from shippers other than the Lehigh Valley Coal Sales Company; I refer to Wertheim.

Q. Is that tonnage rather considerable in the course of a year? A. I think that that tonnage would amount to 50,000 or 60,000 tons.

Q. For the Wertheim Company? A. Yes.

5208 Q. Take another point, such as Phillipsburg; will you look at the lessees mentioned in the petition? A. Well, there is not less than three of them have received coal from sources other than the Lehigh Valley Coal Sales Company.

Q. Would you say that the points you mention are representative, and that the same thing is true throughout the line? A. Fairly so, sir.

Q. Is it part of your duty to see that consignees and shippers observe the various requirements of the tariffs of this company so far as transportation is concerned? A. It is, yes.

Q. You check up and audit all waybills for the pur- 5209
pose of determining, among other things, whether tariff rates are collected? A. It is the duty of the auditor to insure to the carrier for service performed the sums required by the lawful tariffs.

Q. Are you familiar with the terms of any of the leases mentioned in this petition? A. No, I am not. They are recorded in the office but I do not carry them in my mind.

Q. Are you familiar with any obligations that may exist or what may purport to be an obligation, upon the 5210
lessee to route all his traffic over the Lehigh Valley Railroad? A. I am not familiar with any such alleged requirement.

Q. Do many of these lessees mentioned on the pages in question receive large amounts of bituminous coal? A. They do.

Q. Over the Lehigh Valley Railroad? A. They do.

Q. Can you mention some in particular? A. I notice Allentown, Eiderdown Company, a receiver of bituminous coal; Cuddy & Geherin of Auburn and L. Wertheim of Jersey City; James Coyle of Jersey City; Paul Bro- 5211
thers of Newark, among more prominent ones.

Q. If there existed a binding obligation upon the lessee to route his traffic over the Lehigh Valley Railroad would it be part of the duties of your department to see that that obligation, if it were binding, were enforced? A. I think so, sir.

Q. Have you ever received any instructions during your eleven years in office to the effect that you were to check up or follow any existing obligation upon a shipper or a receiver of freight to route all of his traffic over 5212
the Lehigh Valley Railroad or any part of it? A. I have never received any such instructions nor any such intimation.

Q. So far as any instructions that you or any of the people under your jurisdiction may have received, and so far as the records in your office are concerned, I understand you to say then that every shipper and consignor on this railroad is free to ship his traffic as he pleases, or every consignee to direct the routing of it as he pleases? A. Entirely so.

5213 Q. I show you a statement entitled "Statement of gross tons anthracite—other freight—all freight—(revenue freight only) transported over the Lehigh Valley Railroad Co." itemized from years 1894 to 1913, both inclusive, and ask you whether that statement was prepared in your office? A. It was.

Q. And is it correct? A. It is.

Mr. Boles: I offer the statement in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 60.**

5214

Q. You said, did you not, that it was your duty to see that every requirement of the company's tariffs were observed in respect to this traffic? A. Yes.

Q. Do you know of any favors ever extended to the Lehigh Valley Coal Sales Company in respect to this traffic?

Mr. Machen: Objected to as calling for a conclusion of law.

5215 A. I do not.

Q. If you found that any shipper on the line of the Lehigh Valley Railroad—and by the term "any" I include the Lehigh Valley Coal Sales Company and prior to its coming into being the Lehigh Valley Coal Company—received any preferences or favors or discriminations of any kind, would it be part of your duties to report the existence thereof? A. It would.

Q. Did you ever find any such? A. No, sir, I did not. I have occasionally called the attention of various
5216 shippers to minor matters which were corrected at once, but nothing of any consequence, and in the course of the office procedure every day we call attention to errors in rating or routing or something, as a matter of routine, every day, but nothing in the matter of persistent or continued disregard of tariffs or regulations.

Q. And if you found anything that was persistent disregard of the tariffs or regulations you would call it to the attention of your superior? A. Surely, sir; surely.

Q. Your department, in other words, is a sort of watch dog of the tariffs? A. Quite so, sir.

Q. Did you ascertain from your waybill auditing or 5217
in any other way or manner that the Lehigh Valley Coal Sales Company were not fully meeting the requirements of the company's tariffs, would you bring them to task the same as any other shipper on the line of the road? A. Without any distinction, sir.

Q. So far as you know that company is simply one of the shippers on the line of this road? A. So far as I know.

Q. I show you a statement entitled "Lehigh Valley Railroad Company, subdivision of anthracite coal re- 5218
ported as produced by the Lehigh Valley Coal Company and Coxe Brothers & Co., Inc., transported to local points on the Lehigh Valley Railroad and to connections and water reshipment points for a series of years," showing items for the years 1900 to 1913, both inclusive, and I ask you whether that statement was prepared in your office? A. Not in its entirety, Mr. Boles.

Q. Will you explain how it was prepared? A. Up to and including the third column entitled "Net production" it was taken from a statement which was sent to 5219
my office by you for the purpose.

Q. That includes columns—— A. One, two and three. The Lehigh Valley supply in the fourth column was prepared by me and deducted and the column five, the remainder, was supplied in my office, and the subdivision of that total of 74,000,000 tons as between local deliveries and connecting line deliveries was prepared in my office on the ratio which was shown by my records to exist each year during the term for which the statement is made.

Q. So far as the figures were prepared or transcribed 5220
from the records in your office the statement is correct? A. It is.

Mr. Boles: I offer the statement in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 61.**

5221 **Lewis A. Tompkins**, recalled on behalf of the Lehigh Valley Railroad Company, testified as follows:

Direct Examination by Mr. Boles:

Q. I show you a statement entitled "Anthracite coal, gross tons," showing the total production in the State of Pennsylvania including fuel consumed, during the calendar years 1900 to 1913, both inclusive, showing the Lehigh Valley Coal Company's total production on the same basis, Coxe Brothers, Inc., total production on the same basis, the combined production of the two lat-
5222 ter, also showing the fuel consumed at the mine (estimated), by the two latter companies and the combined statement; was that statement prepared in your office? A. Yes, sir.

Q. Is it correct? A. All but column one was prepared from the records in my office; column one was obtained from the office of the Coal Trade Journal, that being statistics I would not have for the State of Pennsylvania.

Q. That is the total production for the State of Pennsylvania and those figures you obtained from the Coal
5223 Trade Journal? A. Yes, sir.

Q. The other figures were prepared in your office? A. Yes, sir, from my own records.

Q. And are they correct? A. They are correct.

Mr. Boles: I offer those in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 62.**

Robert S. Dousman, recalled.

5234 Direct Examination by Mr. Warren:

Q. Since March 1st, 1912, the Lehigh Valley Coal Sales Company has been a shipper of anthracite coal on your line, has it not? A. Yes, sir.

Q. And there have been a large number of other shippers of anthracite coal on your line? A. There have been.

Q. Some shippers to Perth Amboy other than the Lehigh Valley Coal Sales Company? A. Yes, sir.

Q. Some shippers to Buffalo other than the Lehigh 3225
Valley Coal Sales Company? A. Yes, sir.

Q. And some shippers to the various line points, as they are called, that is, intermediate points between Perth Amboy and Buffalo? A. Yes, sir.

Q. At the various different stations and villages and towns and cities along the line of the Lehigh Valley Railroad Company? A. Yes, sir.

Q. Have there been shippers other than the Lehigh Valley Coal Sales Company to connecting carriers; that is, you carrying part of the journey of the coal and some 3226
other railroad taking it the balance? A. Yes.

Q. Will you tell us in what respect, if any, the treatment by the Lehigh Valley Railroad Company has differed as to any of these various shippers, one as compared with another? A. I am not aware that there has been any difference. I think they have been treated without discrimination.

Q. As far as you know there has been absolutely no discriminatory favors extended to any shipper on your line? A. None of which I am aware.

Q. Whether it be the Lehigh Valley Coal Sales Company or John Smith or John O'Brien, or whoever it is? 3227
A. Yes, sir.

Q. What would you say as to the treatment of the Lehigh Valley Coal Sales Company as compared with other shippers of anthracite on your line since March 1st, 1912? A. In what respect?

Q. Has it been the same or has it differed? A. The Lehigh Valley Coal Sales Company was not a shipper prior to March, 1912.

Q. I said since March, 1912? A. I don't think I got 3228
your question.

Q. In what respect, if any, has the treatment since March 1st, 1912, differed by the Lehigh Valley Railroad Company to the Lehigh Valley Coal Sales Company as compared with any other shippers of anthracite coal? A. In no respect whatever.

Q. Has the Lehigh Valley Coal Sales Company paid demurrage since March 1st, 1912, at different times? A. They have, sir.

5229 Q. Just as other shippers? A. Under the same rule.

Q. And you enforced all the rules then applicable as to all shippers of anthracite coal since March 1st, 1912, as theretofore for that matter? A. Such is our purpose and intent and so far as I know the practice has followed the intent.

Q. Might it happen without your knowing it? Did I not understand you to say that you were the watch-dog, so to speak, as to the securing to the railroad the freight from all shippers and enforcement of the rules by the
5230 railroad in force as for the time being with reference to all shippers; you said that, did you not? A. I did, sir, and Mr. Boles interjected the watch-dog feature of the question. However, I consented.

Q. However, it is true? A. It is true, yes, sir.

Q. What have you to say then as to the treatment furnished to shippers; would you know if there were any discriminatory favors given to shippers? A. So far as the affairs that come within my jurisdiction I certainly would.

5231 Q. What are the affairs that come within your jurisdiction? A. Why, it is within my jurisdiction to secure from the patrons of the company the sum which the lawful tariffs prescribe for the services performed and that has been done.

Q. As to all shippers? A. As to all shippers.

Q. Alike? A. In exactly the same way, by the application of the lawful tariffs.

Q. How are you advised of demurrage claims of the railroad as to shippers; how does it reach your office? A. Why, it reaches our office through two sources, from
5232 a report prepared by the agents of the demurrage assessed at each station and a confirmatory report from our operating office as to the correctness of the amount so declared.

Q. And what do you do with such matters when they reach your office? A. Why, we supervise the collection and occasionally find it necessary to adjust differences or determine the facts in regard to some discrepancies between the records.

Q. You have jurisdiction then of the presentation of such claims for demurrage to the shippers and the ad-

justment of such claims and collections thereof? A. Not exactly; the operating people pass upon the sufficiency of claims for refunds of demurrage. 5233

Q. Where freights have been properly assessed, whose duty is it to present the claim to the shipper and obtain the collection? A. The agent at the point where the demurrage accrues.

Q. Do you advise them of the amount they are to collect? A. The agents?

Q. Yes. A. No, sir; the agent makes a report to the operating people of the demurrage which he understands to be chargeable under the rules, and the operating people, by means of their records, verify the agents' statements and confirm them and inform me of the amount which should be assessed, then I charge it to the agent and see that it is collected. 5234

Cross-Examination by Mr. Machen:

Q. Mr. Dousman, there has been offered in evidence in connection with your testimony, Lehigh Valley Railroad Company Exhibit No. 59, showing the rate per ton per mile quoted on anthracite coal and on merchandise traffic from Hazleton and from Wilkes-Barre to various points? A. Yes, sir. 5235

Q. This table does not show, however, the amount of tonnage of the two classes of traffic? A. The volume?

Q. The volume of tonnage? A. Yes, sir.

Q. How much was there of the merchandise traffic and how much of the coal traffic? A. Really, I don't carry that in my memory, Mr. Machen.

Q. You had to figure that out in order to arrive at the rate per ton per mile, don't you? A. I have it in my office, but I haven't got it in my head. 5236

Q. Where is your office? A. In Philadelphia. I can turn up the quantities and prices and it is needless to say that we carried all that was offered.

Q. Of course, but the volume of anthracite coal was very considerable—anthacite coal tonnage? A. I dare say.

Q. And very much more than the volume of merchandise traffic between these points? A. Probably so. In-

5237 so much as Hazleton and Wilkes-Barre are not quite as prominent in their production of various articles of merchandise as they are anthracite.

Q. What is about the population of those two towns, do you know? A. I do not.

Q. They are small places? A. I think they would be offended.

Q. Are there any considerable industries at these places other than the anthracite coal business? A. I think that there are many considerable enterprises in
5238 Wilkes-Barre, and there are a good many merchandising concerns in Hazleton. I rather think there are more manufacturing enterprises in Wilkes-Barre than would be found in Hazleton. Here is Mr. Boles' book; this shows that the population of Wilkes-Barre in 1910, was 67,105, and Hazleton does not appear to be here.

Q. How large a proportion of the merchandise traffic moving from Hazleton or Wilkes-Barre to the various points shown on Lehigh Valley Railroad Exhibit No. 59 moves in carload lots? A. I would not hazard an opinion without referring to my records. I have got it
5239 in the papers that I used from which that was prepared.

Q. You can get that and give it to us then very easily? A. If I am so instructed.

Q. I would be obliged if you would get that information for us as to the amount of anthracite coal tonnage moving from Hazleton to the various points, and also the amount of merchandise traffic and the portion of the merchandise traffic which moves in carload lots? A. You say you want me to amplify that statement by
5240 certifying to the volume of anthracite and the volume of C. L. and L. C. L.?

Q. C. L. is carload, and what is the other? A. Less than carload.

Q. You can also give us upon this same statement, can't you very readily, the total amount of revenue received from anthracite coal from movements shown in Exhibit No. 59—Lehigh Valley Railroad Exhibit No. 59—and the amount received on merchandise? A. The total revenue?

Q. Yes. A. Yes, sir. 5241

Q. I would be obliged if you would let us have that also? A. All right, sir.

Q. Does more traffic in volume exclusive of anthracite coal move to Hazleton and Wilkes-Barre from the points mentioned on the Lehigh Valley Railroad Exhibit No. 59, or from Hazleton to those various points? A. I don't think I got your question straight. Did you ask me whether more or less moved to or from?

Q. Yes. A. I really couldn't say. My impression is off-hand that there is more to.

Q. Are the tons mentioned on the Lehigh Valley Railroad Exhibit No. 61 gross tons or net tons? A. Gross tons. It is our practice always to show gross tons on coal unless it shows net. 5242

Q. The figures given on Lehigh Valley Railroad Exhibit No. 61 for the combined production of Lehigh Valley Coal Company and Coxe Brothers & Company for the years 1900 to 1913, inclusive, check with the figures for the production of these companies given in the Lehigh Valley Railroad Exhibit No. 62 offered in connection with Mr. Tompkins' testimony, do they not? A. They were taken from it, yes, sir. 5243

Q. Then the figures given in this table on Lehigh Valley Railroad Exhibit No. 61 were the combined production of the Lehigh Valley Coal Company and Coxe Brothers and include Coxe Brothers even for the years prior to 1905, when the Lehigh Valley Railroad Company acquired the capital stock of that company? A. I presume it does.

Q. Do you come into personal contact with the tenants along the line of the Lehigh Valley Railroad such as those mentioned in pages 52 to 55 of the petition in this case? A. Is that the trestle matter? 5244

Q. Yes. They are not exclusively trestles, I imagine? A. Only in a general way, sir; only in a general way, as I have a great many different matters in the office that I only watch over and supervise in a general way.

Q. Have you ever had occasion to discuss with any of them the matter of the so-called shipping or routing covenants in their leases? A. The lessees?

5245 Q. Yes. A. I don't think I know one of them personally. Certainly I never discussed any such subject with anybody.

Q. You have never informed any of those lessees at any time in the past, that is, prior to the last year or two, that you were not observing them or watching them to see whether they performed such covenants? A. Never had any communication with any lessee on such subject whatever.

Q. Now, in Lehigh Valley Railroad Exhibit No. 61, the
5246 column headed "Tons to local points on L. V. R. R.," means to any points on the Lehigh Valley Railroad? A. Where delivery is made.

Q. Whether in the State of Pennsylvania or in New Jersey or New York? A. Yes, sir.

Q. Any point on the Lehigh Valley system? A. Yes, sir.

Q. Not confined to points on the Lehigh Valley Railroad of Pennsylvania? A. Oh, no, no indeed.

Q. A shipment, for instance, to Buffalo, local delivery would be included in that column? A. Yes, sir. You
5247 will notice the heading in the right hand column provides that it contains the deliveries to rail connections as well as for water reshipment. They are all in there; so that we can deliver a shipment at Perth Amboy for reshipment and it would be in the right hand column.

Q. Yes; does the third column or final right hand column in Railroad Company's Exhibit No. 61 include coal delivered to the Bee Line of barges for shipment to New England points? A. It does.

Q. Or delivered to the Lehigh Valley Transportation
5248 Company for delivery along the—— A. Chicago and Milwaukee?

Q. Yes; on the Great Lakes? A. It does; or anything that went to the New Haven, or the Lake Shore, or the Grand Trunk or any connection.

Q. Is it part of your duty to watch the promptness with which tolls, freight tolls are paid by the various shippers? A. To some extent it falls within my province, and to some extent not, and that is dependent on whether the collection is made by an agent or by means of a general office settlement.

Q. You attend only to the collections for agents? A. 5249
Yes, sir.

Q. And they are necessarily collections from small shippers, aren't they? A. Well, not altogether, although perhaps most of the larger shippers make their settlements through the office.

Q. You haven't anything to do then with the collections from—— A. Only in the preparation of the bills.

Q. But nothing to do with the promptness with which the bills are paid so far as the Lehigh Valley Coal Sales Company is concerned, or prior to 1912 the Lehigh Valley Coal Company? A. We have some arrangements 5250
with some shippers where we make drafts with the bills and I prepare the drafts, the collection drafts, which are deposited. In some cases the collection vouchers are sent to the debtor and remittance follows through the treasurer and is applied to the account on the books.

Q. Do you know what the average rate per ton per mile of freight over the entire Lehigh Valley system is on merchandise traffic; that is to say, traffic inclusive of anthracite and bituminous coal or coke? A. Without looking up the reports I could not quote it exactly, but 5251
I should say in the neighborhood of five mills.

Q. You could easily ascertain those figures exactly? A. Yes, indeed, for the last calendar year. The fiscal year's figures are not prepared yet—the 1913 figures are not done yet.

Q. But up to 1913? A. Oh, yes, indeed.

Re-Direct Examination by Mr. Boles:

Q. Have you ever been connected with any other railroad where your duties involved a knowledge of the 5252
leasing of the company's trestles or sidings? A. No, sir, I have not.

Q. As to the tonnage to connecting lines which was shown on Lehigh Valley Railroad Exhibit No. 61, does the tonnage to connections include tonnage, for instance, delivered at a point like Auburn to the New York Central for switching to the consignee? A. It does not; that is local.

Q. Is there a large volume of tonnage to points like Auburn and Canastota and Phillipsburg and Buffalo

5253 and other points where we connect with other lines which we deliver to the connecting line and the connecting line merely switches to the consignee right in the same city? A. Lots of it, sir.

Q. That is all included in the local tonnage? A. All included in the local, yes, sir.

Q. You were asked by Mr. Machen as to the tonnage delivered to water connections, which might be included in the last column on Lehigh Valley Railroad Exhibit No. 61, and in that connection I show you Lehigh Valley
5254 Railroad Exhibit No. 53, which was prepared by Mr. Miller, who I believe is your chief clerk? A. In the transportation of coal, yes, sir.

Q. And I ask you to state what amount of tonnage was delivered at Perth Amboy during the fiscal year ending June 30th, 1913, to boats belonging to the Lehigh Valley Transportation Company and what amount to other boats? A. The tonnage delivered to the Lehigh Valley Transportation boats was 539,761.15, and delivered to foreign boats was 1,508,381.11.

Q. There was about three times as much to the foreign
5255 boats as to the Lehigh Valley Transportation boats? A. Very nearly three times.

Q. And will you state the figures as to Buffalo shown on the Exhibit as Tifft Farm Dock? A. To Lehigh Valley boats 102,963.06, and to foreign boats 1,462,656.08.

Q. Or about ten times as much to the outside boats? A. No, sir.

Q. How much? A. Thirteen times.

Q. I don't know whether it is quite clear in the record, but I understood Mr. Machen to ask you something
5256 about the duties of your office in respect of the collection by agents of accounts, just explain that? A. The great majority of the charges for transportation service either freight, coal or passenger is collected through the agencies of this company or connecting lines, and a small portion of the service is collected by means of toll bills through the agent's office. Now, I have direct supervision over the amounts that are collected through the agencies and not over the amount that is collected through the general office.

Q. That refers only to actual collection of the debt? 5257
A. Yes, the preparation of the debit is all in my hand.
Q. But so far as the observance of the tariff is concerned your office is responsible in respect of every shipper over the line? A. Quite so.

By Mr. Machen:
Q. Referring again to the Railroad Company's Exhibit No. 53, won't you tell us the total amount of tonnage tranferred at water transfer points to Lehigh Valley boats and total delivered at such points to foreign 5258
boats? A. At all points, Mr. Machen, do you mean?
Q. At all water transfer points; that includes Perth Amboy, Newark Bay, Morris Canal and Tifft Farm? A. Well, the total tonnage delivered to the Lehigh Valley Transportation boats is 800,419.09 and to outside boats 3,371,574.06.
Q. Is the Bee Line included in the Lehigh Valley Transportation Company? A. Yes, sir.
Q. Now, referring to exhibit—Lehigh Valley Railroad Exhibit No. 61, as well as Lehigh Valley Railroad Exhibit No. 53, you say that the coal delivered at line 5259
points along the Lehigh Valley Railroad and switched to other lines is included? A. As local deliveries, yes, sir.
Q. Included in the column to local points on the Lehigh Valley Railroad? A. Yes, sir.
Q. That is, the Lehigh Valley Railroad absorbed the switching charge in each case? A. As the tariffs provide. In some cases they do and in some cases they do not. I should say in the majority of instances they do.
Q. You say the volume of coal so switched is consider- 5260
able? A. Yes.
Q. What do you mean by that? A. Well, I mean that it is a good many thousand tons.
Q. 10,000 or 15,000? A. More than that. I don't know as I would venture a guess for a year; perhaps Mr. Miller, who is more familiar with the details than I am, could give you a guess, but it would be a guess.
Q. Have you figures in your office? A. Yes, I can compile them.
Q. You have them already? A. Well, it would mean

5261 putting together a good many different places and different sections, but it can be done.

Q. For one year? A. For one year it would be quite an enterprise. I could give it to you for a month without much trouble.

Q. How about the coal switched from other lines to points on the Lehigh Valley Railroad; how much is that in amount? A. Well, so far as the anthracite is concerned, I should say it was practically nil; so far as the bituminous is concerned, inconsiderable. Oh, I couldn't
5262 make an estimate, but there is more or less bituminous, but no anthracite.

Q. Is the coal so switched included within the coal received from connecting lines in the reports to the Interstate Commerce Commission coal switched to the Lehigh Valley? A. No, sir; in that case we do not refer to any rates.

Q. You only include in your report of coal or other freight received from connecting carriers coal or other freight which moves under a joint rate? A. Not necessarily that, but upon which there is transportation per-
5263 formed by both companies.

Q. What is the definition of a switching movement? A. I have never been able to find out. I could not tell you. It does not depend upon the character of the engine, or upon the character of the distance, nor of the commodity.

Q. Or length of haul? A. No, nor sometimes on the character of the tariff is a carload——

Q. It does depend on whether you want to call it one or the other? A. I think so, very largely.

5264 Q. But, at any rate, the amount of anthracite coal switched to the Lehigh Valley from other railroads is, as you say, practically nil? A. Yes, sir.

Q. When coal or other freight, bituminous coal, anthracite coal, or any other freight is switched from another road to the Lehigh Valley Road, the Lehigh Valley collects a switching charge, doesn't it? A. When they perform the switching?

Q. Yes. A. No, sir; it is a well settled principle of interline switching that the road performing the transportation shall collect all charges and the switching

road performs the service not for the consignee or consignor, but for the road transportation line. 5265

Q. But you collect from the other line? A. Oh, yes; not from the consignee or the shipper.

Q. But it is a matter for the other carrier to determine whether that carrier will absorb your switching charge, isn't it? A. Now you are on the other side of the question.

Q. I am speaking now of coal switched from other roads to the Lehigh Valley? A. That we spot for delivery? 5266

Q. I don't know what you mean by "spot"? A. Shove it out to the delivery point.

Q. Yes. A. Where the transportation service precedes the switching?

Q. Yes, and where you only perform the switching service? A. Yes. Now, what is your question.

Q. The Lehigh Valley receives for that switching service a switching bill, doesn't it? A. As the tariff provides.

Q. Amounting to a minimum of 30c. a ton? A. Yes, very good. 5267

Q. Now, it is not a matter over which the Lehigh Valley Railroad has any control, whether that toll is absorbed by the other carrier or is collected from the shipper? A. None at all; the other carrier either collects the charge if he absorbs, or if he doesn't absorb——

Q. In how many cases is the switching rate absorbed by the foreign road and in how many cases is it collected by the foreign road from the shipper? A. That is too wide a question for me to answer off-hand, whether you mean in how many instances, in how many places, in 5268 how many groups of traffic and in how many actual cars or what not. I will say generally speaking in these days and times the majority of switching charges is absorbed.

Q. But that has been only quite recent, hasn't it? A. I don't think so; for a good many years.

Q. Four or five years? A. At least that long.

Q. Ten years? A. Yes, ten.

Recess Taken Until Two O'Clock P. M.

5269 AFTER RECESS.

Henry Heinzer, a witness called in behalf of the Lehigh Valley Railroad Company, having been first duly sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. What is your position? A. Statistician of the New York Produce Exchange.

Q. Located here in New York City? A. Yes, sir.

Q. In the Produce Exchange Building? A. Yes, sir.

5270 Q. Have you any figures which show the total shipments of flour made to New York City or New York Harbor points? A. Yes, sir.

Q. How did you compute them, by calendar years? A. We compute them by calendar years, monthly and weekly; any way you want them.

Q. Have you the figures before you for 1912 or 1913? A. 1913, yes, sir.

Q. What were the total shipments for the year 1913?

Mr. Machen: I object to it as irrelevant.

5271

The Witness: I assume that by "shipments," you mean receipts, that is receipts at New York.

Q. Over the different railroads, yes. A. 9,451,446 barrels.

Q. That is over all the different railroads to New York? A. By rail and water; yes, sir.

Q. Received here? A. Yes, sir.

Q. By rail and water, or received here by rail? A. Rail and water, including water.

5272 Q. Can you tell the number received here by railroad? A. Yes, sir.

Q. What was the number? A. 9,430,468 barrels.

Q. Over what different railroads? A. Over the Hudson, West Shore and Erie.

Q. By the Hudson, lets get that straight. A. The Hudson River Railroad.

Q. The New York Central, do you mean? A. Yes, New York Central; West Shore, Erie, Pennsylvania, Lackawanna, Lehigh Valley, Baltimore & Ohio, and various lines.

Q. What number were received over the Lehigh Val- 5273
ley Railroad?

Mr. Machen: Same objection goes to all this testimony.

The Witness: 2,577,700.

Q. What percentage does that bear to the whole? A. 27.27.

Q. That is 27.27 per cent. of all shipments received here by railroad? A. And water.

Q. What is the percentage of the shipments received 5274
by railroad? A. Well, it is slightly larger; I think it is 27.31 or .33 per cent. I haven't got the figures before me. I calculated that, though; I think 27.33 of all railroads, separately, and excluding via water.

Q. It is over 27.30? A. Yes, over 27.30%.

Mr. Boles: Cross-examine?

Mr. Machen: I have no questions to ask.

(Witness Excused.)

5275

John A. Porcher, a witness called in behalf of the Lehigh Valley Railroad Company, being first duly sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. What is your position? A. I am chief clerk of the Report Department of the Trunk Lines Association.

Q. Located where? A. 143 Liberty Street, in this building.

Q. Was there prepared under your direction and 5276
supervision a statement dated July 10th, 1913, showing sugar shipments from New York City and Philadelphia to and beyond the western terminii of the Trunk Lines by the various railroads in Trunk Line territory and divided by various railroads as thereon shown? A. Yes, there was.

Q. Is that a correct copy of the statement? A. That is a correct copy, facsimile.

5277 Mr. Boles: I offer the statement in evidence.

Mr. Machen: Objected to as irrelevant to the issues in this case.

Marked **Lehigh Valley Railroad Company Exhibit No. 63.**

Q. Was there prepared under your supervision and direction a similar statement for the period from January 1 to June 23rd, 1914, statement dated July 8th, 1914? A. There was.

5278 Q. Is this a correct copy thereof? A. A correct copy.

Mr. Boles: I offer the statement in evidence.

Mr. Machen: What is the difference between these two?

Mr. Boles: Different years.

Mr. Machen: Same objection.

Marked **Lehigh Valley Railroad Company Exhibit No. 64.**

Mr. Boles: Cross-examine?

Mr. Machen: No questions.

5279

George A. Thompson, a witness called in behalf of the Lehigh Valley Railroad Company, being first duly sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. What is your position? A. Statistician, Lehigh Valley Railroad Company.

Q. In the operating department? A. Yes, sir; under

5280 the Vice-President.

Q. Have you prepared a statement showing the tons of freight traffic during the year ending June 30th, 1913, handled via the different railroads in trunk line territory and divided as to the different classes of freight in accordance with the classification of the Interstate Commerce Commission? A. Yes, sir.

Q. Is this a correct copy thereof? A. Yes, sir, it is.

Q. Is the statement correct? A. To the best of my knowledge and belief it is.

Q. From what sources did you secure the information? A. From reports made to the Interstate Commerce Commission by the various roads and certified to by the presidents and general auditors of those roads. 5281

Mr. Boles: I offer the statement in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 65.**

Cross-Examination by Mr. Machen:

Q. Do the figures in this table relate to all of the specified classes of commodities carried by these several carriers? A. Yes, sir. 5282

Q. Whether originating on the line of the carrier or received from connecting roads? A. Yes, sir.

Mr. Machen: That is all.

(Witness Excused.)

Mr. Boles: I offer in evidence the statement which was prepared by Mr. Armstrong, and which was identified as Lehigh Valley Railroad Company's Exhibit 5 for Identification.

Marked **Lehigh Valley Railroad Company's Exhibit No. 5,** in evidence. 5283

George H. Foster, a witness called on behalf of the Lehigh Valley Railroad Company, being first duly sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. You testified when called by the Government as a witness in this case that there were two of the existing leases of trestles as to which the so-called shipping clause has not been changed, did you not? A. Three of such instances. 5284

Q. Three; what were they? A. Two to the Wertheim Coal & Coke Company, the two being practically one lease.

Q. One supplementary to the other? A. One being supplemental to the other; and one to the Greenville Coal & Ice Company.

5285 Q. Now, what negotiations, if any, did you ever have with the Wertheim Coal & Coke Company or any member of the firm or officer of the company, as to modifying the lease or eradicating the shipping clause from either of the Wertheim leases you have referred to? A. No negotiations with the Wertheim Coal & Coke Company.

Q. Did you so intend to say in your testimony when you were on the stand as a Government witness? A. I did not.

5286 Q. The petition of the Government in this case, at page 48, says: "And the Lehigh Valley Railroad Company has discriminated in favor of the Lehigh Valley Coal Company, particularly by leasing to it extensive storage plants, trestles and coal yards, at much less than their true rental value." Have you in existence any leases to the Lehigh Valley Coal Company of property of any kind, storage plants, trestles, coal yards or what not, at rentals which are on a basis much less than the true rental value of the property? A. We have not.

Q. The petition recites particularly a storage plant at
5287 South Plainfield, New Jersey. Is that in your opinion leased at its true rental value? A. It is.

Q. It also recites the coal trestle at Pioneer Street, Newark, New Jersey. Is that leased in your opinion at its true rental value? A. It is.

Q. It also recites a coal trestle at Mt. Hope Avenue, Rochester, New York. Is that in your opinion leased at its true rental value? A. It is.

Q. It also recites a coal trestle at Grand Street, Jersey City, New Jersey. Is that in your opinion leased at
5288 its true rental value? A. It is.

Q. On what do you base your answers as to these respective trestles and properties? A. On my knowledge of the properties and on the valuations of the properties, and on the facts and circumstances surrounding each particular lease.

Q. Who made the valuations? A. W. J. Wilgus.

Q. His figures were reported to you? A. They were, and were accepted by me, and the rental was based on his valuations.

Q. At a certain percentage? A. At a certain per- 5289
centage of the valuation made by Mr. Wilgus.

Q. Which was how much in percentage? A. Four per cent., in addition to which the tenant, as stated in the lease, pays the taxes, insurance and repairs. The taxes would approximate 2 per cent. additional.

Q. In each case? A. Yes, in each case.

Q. Did you offer to lease to the Plymouth Coal Company a tract of land at South Plainfield adjoining the storage plant which is leased to the Lehigh Valley Coal Company, at that point? A. The Lehigh Valley Rail- 5290
road Company offered to make a lease. Without looking into my records, I don't know whether I made the offer or whether the vice-president made the offer.

Q. Are you also familiar with it? A. Yes, sir.

Q. It passed through your hands? A. Yes.

Q. Did the Plymouth Coal Company apply to you for a lease of property at that point? A. They did.

Q. And following that application the offer in question was made? A. The offer in question was made.

Q. On what basis was the offer made? A. The offer 5291
to the Plymouth Coal Company was made in a letter from the vice-president of the Lehigh Valley Railroad to the president of the Plymouth Coal Company, dated August 5, 1913. We offered to lease to the Plymouth Coal Company a piece of land at South Plainfield containing about five acres, at a rental of $50.00 per annum, which is 4% on its value, together with the taxes on the land and on structures, buildings and properties placed on the land by the tenant. I have knowledge that this rental value was fixed at 4% on the valuation of the particular property made by Mr. Wilgus; in other words 5292
the offer to the Plymouth Coal Company was on the same basis as the lease to the Lehigh Valley Coal Company.

Q. Mr. Wilgus' valuation was made without any reference to this application? A. Oh, absolutely.

Q. Do you stand ready to lease unoccupied or surplus property along the line of the railroad on the same basis as you make your leases to the Coal Company or the Coal Sales Company or to any shipper of anthracite

5293 coal? A. We stand ready to do it, and are doing it day by day. I do not mean we are leasing to shippers of anthracite coal day by day, but we are making leases to all kinds of shippers day by day on that basis.

Q. You stand ready to make such leases to any shipper of anthracite coal? A. Yes.

Q. Glad to do it? A. Yes, glad to do it.

Q. Or to any dealer in anthracite coal or to any consignee or receiver of anthracite coal? A. To any class of [illegible], including both classes.

5294 Q. The petition in this case at page 51 states that "In further pursuance of its purpose to monopolize the transportation of anthracite from mines along its line, the Lehigh Valley Railroad and its subsidiary railroad corporations have leased land adjacent to their tracks to large dealers in or consumers of anthracite at points of distribution, such as Perth Amboy, New Jersey; Jersey City, New Jersey; Newark, N. J., Phillipsburg, N. J., and Allentown, Pennsylvania, at excessively low rentals, in return for agreements expressed or implied, that the lessee should route all shipments, both in-bound,
5295 and out-bound, in such way as to give to the Lehigh Valley Railroad or the lines preferred by it the long haul." Is that true? A. It is not.

Q. In some of the leases to which your attention was called by the Government, the clause as to the shipping of property, which previously existed in the lease, and which has since been eradicated as the testimony will show, begins by saying: "In consideration of the low rent." Was there any real relation between that clause and the rental fixed in the leases? A. No relation what-
5296 soever.

Mr. Boles: I offer in evidence at this point the paper which either was previously offered in evidence or which was marked for identification as Exhibit No. 1, which was the statement as to the tonnage of the Wertheim Coal & Coke Company of Jersey City.

Marked **Lehigh Valley Railroad Company Exhibit No. 1.**

Mr. Boles: I also offer in evidence the statement which was either offered or marked for

identification as Exhibit No. 2, which was the 5297
statement as to the existence of shipping clauses in various classes of leases at different points along the line of the Lehigh Valley Railroad.

Marked **Lehigh Valley Railroad Company Exhibit No. 2.**

Mr. Boles: I also offer in evidence the statement which was either offered or marked for identification as Lehigh Valley Railroad Exhibit No. 3, being the statement as to the square foot rentals in various leases at points along the line of the 5298
Lehigh Valley Railroad.

Marked **Lehigh Valley Railroad Company Exhibit No. 3.**

Mr. Boles: I also offer in evidence a correct copy of the letter from Eugene W. Leake to myself, dated June 30th, 1914, which was marked for identification as Lehigh Valley Railroad Company's Exhibit No. 6.

Marked **Lehigh Valley Railroad Company Exhibit No. 6.**

Mr. Boles: I also offer in evidence at this 5299
point a copy of the reply which I wrote to Mr. Leake under date of July 3rd to the letter in question.

Mr. Machen: I will admit that the letter was dictated, signed and mailed, but object to its admissibility on behalf of the defendant.

Marked **Lehigh Valley Railroad Company Exhibit No. 66.**

Mr. Boles: I offer in evidence a duly certified copy of the charge of the court in the trial of the 5300
so-called Yates-Lehigh Company case, which case involved the trial of the indictment of the Lehigh Valley Railroad Company in respect of the lease to the Yates-Lehigh Coal Company referred to on page 51 of the Government's Petition in this case, which lease is set out in detail as Exhibit No. 2 attached to the said petition.

Mr. Machen: For what purpose is that Charge offered?

5301 Mr. Boles: It states the relevant facts to be taken into consideration, both pro and con, in determining whether rentals are fixed at excessively low figures or at low figures at all, in the making of leases of adjacent property as set forth by the Government, and what facts should be taken into consideration, both pro and con, in determining whether any discrimination was involved in the making of such leases, as viewed by one of the Federal Courts of the United States.

5302 Mr. Machen: We object to the admissibility of this document as evidence in this cause because, one, the rulings of a court in a criminal case in which the government is not entitled to an appeal cannot be admissible against the government in any civil proceeding; second, because, in so far as the charge of the court relates to matters of fact, it is irrelevant; third, because upon the facts proved in the present case, the legality of the covenants containing routing clauses or shipping clauses, is a question of law for the court in this

5303 case.

Marked **Lehigh Valley Railroad Company Exhibit No. 67.**

Mr. Boles: I offer in evidence a duly certified copy of the docket entries in the same case; that is in the case brought in reference to the lease to the Yates-Lehigh Coal Company.

Mr. Machen: We object to the admissibility of these docket entries for the reasons above stated, so far as applicable; and also for the

5304 further reason that the verdict of a jury in a criminal case is not admissible as against the government in a civil case. The evidence in this case is different from the evidence in the said criminal case, because the standard of proof is different in a criminal case than in a civil case.

Mr. Boles: I will say in answer to all these objections that the Government charges in the petition in this case that the lease was made for the purpose of discriminating, and that the indict-

ment which was brought at Buffalo on the same lease, was brought containing a charge that it was made for the purpose of discriminating. 5305

Marked **Lehigh Valley Railroad Company Exhibit No. 68.**

Cross-Examination by Mr. Machen:

Q. Have you ever been engaged in the real estate business? A. Not outside of my railroad work.

Q. You said when you were on the stand before that you were a member of the Bar, and have practiced, I believe. A. I am a member of the Bar of the state of New York; yes. 5306

Q. When were you admitted? A. 1901, July.

Q. For how long a time did you practice? A. In a desultory sort of way for two years.

Q. Did you then become connected with the railroad? A. I became connected with the railroad in 1904, January 1st, 1904.

Q. Do you consider a return of four per cent. on the value of real estate a fair return? A. A return of four per cent. plus taxes or without taxes? 5307

Q. Plus taxes. A. An average return of four per cent. plus taxes, under a lease terminable by the landlord on short notice, I consider a very fair and reasonable return.

Q. Even a lease from year to year? A. Even a lease from year to year, under the railroad lease, yes.

Mr. Machen: That is all.

(Witness excused.)

5308

W. J. Wilgus, recalled, testified as follows:

Direct Examination by Mr. Boles:

Q. You were asked yesterday, Mr. Wilgus, whether your diagram No. 8, which is in evidence in this case, and your statement as to the average capital obligations issued, and assumed rate of return thereon, which accompanied it reflected in any way the return on or lack of return on obligations of any coal company,

5309 whether capital stock or bonds. Now, will you kindly explain to what extent those exhibits do reflect that element? A. In my previous testimony I failed to emphasize the fact that, as noted at the bottom of my Exhibit A, Lehigh Valley Railroad Exhibit No. 43 in this case, the obligations shown are those outstanding in the hands of the public. Where the annual report showed that capital obligations were held in the treasury of the company, those were excluded, and also the interest thereon.

5310 Q. In other words, Exhibits No. 43 and 47 only reflect the lack of return, or the actual return, as the case may have been on the securities actually outstanding in the hands of the public? A. Yes, as exhibited by the annual reports of the company.

Q. Did you include therefore any obligations of any coal companies, as you may have found them in the annual reports of the Lehigh Valley Railroad Company? A. Only in so far as they were in the hands of the public.

Q. And what did you find in the hands of the public
5311 as shown in the annual reports of the railroad company? A. I found that from 1895 to 1902 inclusive, there was a little over ten million dollars of Lehigh Valley Coal Company bonds in the hands of the public guaranteed by the Lehigh Valley Railroad, and the interest thereon paid by the Lehigh Valley Railroad.

Q. Now, from the annual reports to the stockholders by the board of directors, were you able to find that the railroad company collected any part of that interest from the Coal Company? A. I could find no such evi-
5312 dence.

Q. Therefore, you included that issue as one of the elements in making up Exhibits 43 and 47? A. I included the principal among the capital obligations outstanding and I, of course, included only such interest as the company paid on its obligations in those years, which included 5 per cent. thereon.

Q. And that is for the reason that, as you have explained, you could find that no reimbursement was received by the railroad company so far as the annual reports show which you examined? A. Yes.

Q. To what extent did the inclusion of that element affect the exhibits in question? A. The bonds in question of the Lehigh Valley Coal Company guaranteed by the Lehigh Valley Railroad amounting to a little over $10,000,000 were 5% bonds, which made the amount of interest about $500,000 per annum, and for the eight years in question therefore amount, exclusive of interest on the interest, about $4,000,000, so that I should say roughly that the amount of interest involved would vary from four million to five million dollars. 5313

Q. And to what extent did that amount, that is in terms of percentage, affect your final results? A. Adding $5,000,000 in round figures to the total interest and dividends as found from the annual reports would increase the rate of return from 5.4 per cent. to 5.5 per cent. 5314

Q. Or affecting the final result one-tenth of one per cent.? A. Yes.

By consent of counsel the cross-examination of Mr. Wilgus is deferred until some later time, prior to July 30th. 5315

Julius I. Morrison, a witness called in behalf of the Lehigh Valley Railroad Company, being first duly sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. What is your occupation? A. General Auditor of the Lehigh Valley Railroad Company.

Q. I show you a statement entitled "Lehigh Valley Railroad Company's Statement of securities of coal companies held in the past or now owned by Lehigh Valley Railroad Company, showing in detail the various issues, the kind of security, the date acquired, the par value, the consideration for the securities acquired, the credits or debits to property accounts in respect to the said securities, the resulting book value after the making of the credits and debits, the date of disposition of the securities, the consideration received therefor at the 5316

5317 time of disposition," all as may be stated in the exhibit, and the securities owned June 30th, 1914, showing the par value and the book value on such date; and ask you whether that statement was prepared in your office under your supervision and direction? A. It was.

Q. Is it correct? A. Yes, sir.

Mr. Boles: I offer the statement in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 69.**

5318 Q. On this statement are various figures in red showing amounts of credits in respect to the different securities, in other words, the amounts as to which they are written down to different accounts while held by the railroad. Will you explain so far as you know the reasons for these writings down throughout the different accounts? A. They were written down for various reason, often apparently with a view to charging off to profit and loss the depreciation of the property, from the mining out of the coal, or because the
5319 profits of the year were such as would appear to make the time favorable for the reducing of the asset accounts, the value of which there might be some question about. For instance, in the way that a merchant who had a number of horses and vehicles carried as an asset account representing the value of his stock and, if the year was a good one, he might write off five thousand or ten thousand dollars of the value of his horses and wagons. If the year was a poor one, he might not feel that the income account for that year would stand
5320 it, and he consequently would not write off much of anything. In other words, during the time which this kind of bookkeeping was done the railroad companies conducted their business much like merchants or other people that did a mercantile business.

Q. Have you been connected with the accounting departments of other railroads? A. Yes, sir.

Q. What companies? A. Why, with the Kansas City, Fort Scott & Memphis Railroad from 1886 to 1898 as chief clerk in charge of the general accounts, the dis-

bursements and ticket accounts of the company, under 5321
the direction of the comptroller, and reporting to him, and part of the time as auditor of freight traffic, under the same man.

Q. Did that company do the same thing in those days? A. Yes.

Q. Have you been with the auditing departments of any other railroads? A. The Kansas City Southern Railway.

Q. Did that company do the same thing? A. I don't think they owned outside companies on the Kansas City 5322
Southern, so that we did not have occasion to do that kind of bookkeeping. In fact, the Kansas City Southern when I was with it was after the Interstate Commerce Commission was beginning to get somewhat more particular about these matters, and the railroad companies were beginning to conduct their affairs more as a public institution than before.

Q. The various writings down that you have referred to occurred prior to the time when the regulations of the commission as to uniform accounts and allied mat- 5323
ters were in force on the different railroads? A. Yes.

Q. Were you generally familiar with railroad accounting methods throughout the country at that time? A. Yes, the accounts were largely kept the same. We made our reports at that time to the Interstate Commerce Commission, but it was largely operation and transportation matters. They did not go into these outside matters, which they have in more recent years.

Q. Well, would you say from your general knowledge of railroad accounting in those dark and evil days that 5324
all railroads treated their investments in outside securities in much the same manner you have testified to here? A. Yes, I don't think there is any doubt about it.

Q. You don't think there is any doubt about it? A. No; there is no doubt about it.

Q. Did the writing down of the securities as they may be reflected in the column I have referred to have any relation whatever to the returns being received by the railroad company on the different securities at that time? A. It does not appear to have had the least.

5325 Q. I see some small amount here, such as seventy-nine dollars and some cents, and ten dollars, and sixty-one dollars, and one hundred and twenty-five dollars, and two hundred and eighty-six dollars, and three dollars. What do those amounts mean? A. Those were amounts that were written down at the time those properties were turned over to the Lehigh Valley Coal Company and represent the difference between the book accounts and the even thousand dollars for which they were sold. As a matter of fact, there was a write-up of about $5,000
5326 as the result of the transaction and these little items spoken of went to reduce that sum somewhat.

Q. You have prepared this exhibit, and therefore know what the final result of it all is. Can you say from your knowledge thereof, and from your familiarity with the accounts of the Lehigh Valley Railroad Company, that the Lehigh Valley Railroad Company and the Lehigh Valley Coal and all the other coal companies mentioned thereon, are to-day square? In other words, that the different companies thereon have settled their accounts with the railroad?

5327 Mr. Machen: That is objected to as leading, and because the document contains no data from which to deduce such an opinion.

The Witness. All of the accounts of the Lehigh Valley Railroad Company to which these items were charged, when the transfer was made and the property turned over to the Coal Company, have been squared off, and there is at the present time none of the items outstanding on the books of the company.

5328 Q. Does the statement show, and is it a fact that these different companies paid us dollar for dollar when we sold the securities, or transferred the securities? Paid us dollar for dollar what they had cost the Lehigh Valley Railroad Company? A. I don't know about that. I should say probably not, because in a number of instances the property was written down by the railroad company and the statement shows for itself as to that.

Q. But what is your answer if you disregard the credit column shown on the statement which you have ex-

plained the reason for the writing down of? A. In some 5329
instances the Lehigh Valley Coal Company turned over to the railroad company stock at par in excess of the amount which the property cost the Lehigh Valley Railroad. In other cases they did not turn over as much as the property cost, but largely speaking the railroad company appeared to have turned over the property to the Coal Company at substantially the amounts that it appears to have stood at that time, on the books of the railroad company.

Q. And the only changes that were made in the books 5330
of the railroad company in respect of the securities are shown on this statement, are they not? A. Yes, sir.

Q. And all these changes, you have explained the reasons for the making of, so far as you were able to ascertain? A. Yes, sir, so far as the books will show, all the explanations have been truthfully shown on that statement.

Q. When you were called by the Government as a witness in this case you were asked about the payment of interest on the certificates of indebtedness amounting to $10,537,000, and you stated that the letter which you 5331
received and which the Government placed in evidence meant merely that you were not to charge up on the books of the company any interest on those certificates; is that correct? A. I stated that that would be in my opinion what the auditor would determine from that letter. I was not at that time the general auditor.

Mr. Machen: The letter was not addressed to you?

The Witness: No, it was addressed to my 5332
predecessor. That is the reason I stated it was not what I did, but what my opinion was that he would construe it to mean.

Q. What did you say as to the relations of the treasurer to a transaction of that kind? A. I said the treasurer was the man that would look after the collection of the interest, that it was not the duty of the auditor to collect money. The interest would be paid to the treasurer.

5333 Mr. Boles: I offer in evidence the letter of John W. Platten, dated June 30th, 1905, Mr. Platten at that time holding the office of second vice-president of the Lehigh Valley Railroad Company, addressed to and sent to Mr. W. C. Alderson, the then treasurer of the Lehigh Valley Railroad Company, relating to the certificates of indebtedness above mentioned, being the letter referred to in the caption of the letter which is in evidence as Government's Exhibit No. 41.

5334 Marked **Lehigh Valley Railroad Company Exhibit No. 70.**

Q. I show you a statement entitled "Lehigh Valley Railroad Company advances to other companies from 1894 to 1902 inclusive," and ask you to say whether that statement was prepared under your supervision and direction? A. Yes.

Q. Is it correct? A. It is.

Mr. Boles: I offer the statement in evidence.

5335 Marked **Lehigh Valley Railroad Company Exhibit No. 71.**

Q. Does that statement show for the years 1894 to 1902 both inclusive the various advances made to the different companies, which are referred to in the Annual Reports for those years as "Advances to other than controlled coal companies"? A. It does.

Mr. Machen: Other than coal companies or controlled railroad companies, doesn't it?

5336 The Witness: That is right, to the subsidiary lines; advances to our subsidiary lines.

Q. I show you for instance, the annual report for the year 1902, page 16, and ask you whether the statement which is Exhibit No. 71, does not show the detail of the item on page 16 of said annual report which is mentioned as "Advances to other companies, $355,007.64?" A. It does.

Q. And is that account carried under the head of cur- 5337
rent assets? A. Yes.

Q. Is that true of each of the years in question? A. It is.

Q. I show you a statement entitled "The Lehigh Valley Railroad Company's Summary of Stocks and Bonds of Coal Companies and Water Companies, owned at the close of each year and return received thereon during each year," and ask you whether that paper was prepared under your direction? A. It was.

Q. Is it correct? A. It is. 5338

Mr. Boles: I offer the statement in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 72.**

Mr. Machen: Are the figures on this paper a mere compilation of the figures shown separately for each coal and water company on Government's Exhibit No. 103, which was filed in connection with your previous testimony.

The Witness: That is that detailed statement?

Mr. Machen: Yes. 5339

The Witness: Yes.

Q. I show you a statement entitled "Lehigh Valley Railroad—Statement of property investment and income account, and sundry statistics, for the years ending June 30th, 1894 to 1913, inclusive, and eleven months to May 31, 1914," and ask you whether that statement was prepared in your office under your supervision or under your direction? A. It was.

Q. Is it correct? A. It is. 5340

Mr. Boles: I offer the statement in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 73.**

Q. And the various accounts thereon shown relate strictly to the transportation system of the Lehigh Valley Railroad Company? A. They do, down to the net operating income, below which I show the per cent. earned on property investments.

5341 Q. What are the items called "Other Income?" A. That is income from outside properties of the Lehigh Valley Railroad, which has nothing whatever to do with the transportation by it of freight or passengers, or other income from the operation of its railroad for the use of the public.

Q. Well, does it include the income on the bonds of the coal company owned by the railroad company? A. Yes, it does include them, and includes the dividends from Coxe Brothers, and that kind of outside income
5342 that we get.

Mr. Machen: All income from all sources other than the operation of the railroad?

The Witness: Exactly.

Q. I show you a statement entitled "Lehigh Valley Railroad Company, Statement re Purchase of Capital Stock of Coxe Brothers & Co., Inc., and Delaware, Susquehanna & Schuylkill Railroad Company, showing amount of investment, cash outlay, cash receipts, and
5343 excess of cash receipts over cash outlay, to June 30th, 1913," together with the accompanying statement therein referred to marked as sub-statement A, B, and C, and ask you whether these statements were prepared in your office and under your direction? A. They were.

Q. Are they correct? A. They are.

Mr. Boles: I offer the statements in evidence as one exhibit.

Marked **Lehigh Valley Railroad Company Exhibit No. 74.**

5344 Q. Will you explain the deductions shown thereon of $1,099,430.68, relative to a thousand coal cars? A. That was a thousand coal cars which the D. S. & S. Railroad had contracted for just before the capital stock was purchased by the Lehigh Valley Railroad, and in consummating the purchase the use was made of the proceeds on the funds derived from the $19,000,000 to pay for those coal cars. Part of the money had been paid by the D. S. & S. Railroad, before

we took the property over, and served to reduce the net 5345
cash sum that was turned over to us by Coxe Brothers about June, 1906, which is shown below, stated to be $351,740.95; so that these coal cars when bought were taken over by the Lehigh Valley Railroad, marked Lehigh Valley Railroad and have never been considered a part of the D. S. & S. property. So that, stated briefly, this portion of the funds acquired from the proceeds of the bonds was used to buy a thousand cars for the Lehigh Valley Railroad, and the balance of the sum was utilized in the purchase of the Coxe Brothers' stock and 5346
the D. S. & S., etc.; therefore, it is eliminated on this statement from the total proceeds of the collateral trust 4 per cent. bonds as not applying to the purchase of the D. S. & S., and the Coxe Brothers' property.

Q. Were they brand new cars? A. Absolutely new.

Q. And were they of large capacity? A. 100,000 capacity cars, steel cars of the most modern type.

Q. And still of the most modern type? A. Yes.

Q. Do you audit the accounts relative to the purchase of coal cars in your department? A. Yes.

Q. Are you therefore familiar with the prices which 5347
this company pays for its steel cars? A. Yes, the prices paid for these coal cars.

Q. I mean general coal cars? A. Its general coal cars that it buys. I can't say that I am familiar enough to talk about it. The contracts for the coal cars are all sent to my office and the price paid for those coal cars was substantially the same as the same type of coal cars which we bought at that time on contract.

Q. That is the point. A. All contracts for cars are sent to my office, and when the bills are received and 5348
our operating department certifies to the receipt of the cars, why, I pay for the cars on the basis of those contracts.

Q. And the amount which you have deducted here as the price for these one thousand cars is on the same basis, substantially, as the price which we paid for coal cars at that time? A. Yes, sir, and is exactly the sum that was paid for those particular cars.

Q. The exact sum that was paid to the manufacturer? A. Yes, sir.

5349 Q. Will you explain the item of deduction shown as cash received from Coxe Brothers & Co., Inc., $2,113,447.41? A. That sum was the proceeds of the open book accounts, principal and other cash assets of Coxe Brothers, which was owed to them by the purchasers of the coal at the time we bought the property, and which the treasurer of Coxe Brothers turned over to the Lehigh Valley Railroad when he had collected the sums and gotten cash from those people and had it in the bank so he could turn it over to us.

5350 Q. That amount, then, represents cash in the bank actually transferred to the Railroad Company? A. Absolutely on June 27, 1906, which was six or seven months after we bought the property.

Q. Was the cash account of $351,740.95 also actual cash turned over by the D,. S. & S. Railroad Company to the Lehigh Valley Railroad? A. Yes, precisely the same.

Q. And was the amount of $1,999.90 actual cash turned over by the different water companies to the Railroad Company? A. Yes, actual cash.

5351 Q. Did you charge up on the books of the company $60,000 as the cost of the stock of the four water companies mentioned? A. Yes, and that property was afterwards sold, as shown on the statement, and 5% bonds obtained for $60,000, which bonds have been paying interest at that amount regularly since June 30th, 1910, when I showed these items as deducted to obtain the net cost of the capital stock, and the other companies' capital stock which we obtained at the time of this purchase.

5352 Q. Are those bonds the bonds of the Wyoming Valley Water Supply Company? A. Yes.

Q. Will you explain the item of $5,086,024 which you have shown as revenue accruing to the Lehigh Valley on anthracite coal moved over the Delaware, Susquehanna & Schuylkill Railroad tracks from November 1, 1905, to June 30th, 1913, and referred to more in detail on your accompanying statement C? A. This revenue has been determined by obtaining from all records the actual amount paid over to us by the Pennsylvania

Railroad Company for the coal delivered to them at Gum 5353
Run as the revenues of that portion of the property formerly the D., S. & S. from the first of November, 1905, when we received the property, until June 30th, 1913. That was actual cash revenue paid to us by the Pennsylvania Railroad Company on the 864,018 tons of coal shown on Statement C. under "Delivered to Pennsylvania Railroad via Gum Run," and similarly the revenue which would have accrued to the D., S. & S. under its arrangement with the Lehigh Valley Railroad under the Division Sheet in effect in 1905, when the 5354
Lehigh Valley purchased that property, applying that Division Sheet rate on the tonnage turned over to us of 9,540,198 tons, which was turned over to the Lehigh Valley Railroad, a total of 10,404,216 tons of coal, which originated on the D., S. & S. during this period.

Q. Prior to November 1, 1905, the Lehigh Valley Railroad actually paid to the D., S. & S. a certain amount of money for every ton of coal which was delivered? A. Yes, as provided for in that division sheet.

Q. That was known as a lateral? A. No, sir, I don't know that it was known as a lateral. I don't know about 5355
that. I know that there was a regular division of the regularly established rates which provided that on the coal coming from such a breaker on the D., S. & S. going to such a point on the Lehigh Valley, they would receive a stipulated division, which was provided in that sheet, and the application of those division sheets to the tonnage which has since been given to us from these same collieries from this same D., S. & S. Railroad, would require the Lehigh Valley Railroad to pay over to the D., S. & S. the sums shown on the Statement C, as $350,178 5356
in the first period; $628,271 in the second period, down through the statement, and in 1913, $707,718 for that year. So that, if the Lehigh Valley Railroad had not bought this property and the coal had been delivered to the Lehigh Valley Railroad, we would have paid them that money as a division in the settlement of the freight charges, and collected it at destination from the consignee.

Q. In other words, if the D., S. & S. Railroad Company had continued under the management of the Coxe estate,

5357 and the output of the breakers on that line was just the same under that management as they have been since, the D., S. & S. would have had gross earnings of that amount? A. On the anthracite coal.

Q. On the anthracite tonnage? A. Exactly.

Q. Have you deducted from that in determining the net income, the operating expenses, fairly attributable thereto on the D., S. & S. rails? A. Yes, sir.

Q. Where are the details of those expenses shown? A. On Statement A.

5358 Q. Will you explain the item of $87,653, shown as revenue collected from the Pennsylvania Railroad Company under a certain trackage agreement? A. The Lehigh Valley Railroad has had a contract for a number of years with the Pennsylvania Railroad by which they have trackage rights to and from Wilkes-Barre, which gives them the use of our tracks between New Boston Junction and Tomhicken. Effective 1909 the connection was made so as to utilize the D. S. & S. and obtain a double track for the movement of that traffic, so that the Pennsylvania Railroad Company
5359 after that time passed over some 8.03 miles on the tracks of the D. S. & S., and this sum represents that pro rata based on the track miles of the tracks used assignable to the D. S. & S. for the use of their tracks from the sums which we collect from the Pennsylvania Railroad Company for this service.

Mr. Boles: I ask to have marked for identification a map entitled "Lehigh Valley Railroad, M. & H. Division, Map showing Delaware, Susquehanna & Schuylkill Railroad. Office of Division
5360 Engineer, Hazleton, Pennsylvania, July 15, 1914. The D. S. & S. in November, 1905."

Marked **Lehigh Valley Railroad Company Exhibit No. 75.**

Q. Mr. Morrison, will you point out on this map of the Lehigh Valley Railroad, marked Exhibit No. 75, the points between which the trackage right prevails over this Delaware, Susquehanna & Schuylkill Railroad? A. I can't do it, I'm sorry but you will have to get some-

body else to do that. It is right in here, but I cannot 5361
tell you where the point is. It is at the Tomhicken end of the joint tracks, the tracks that we rent. One of these tracks at Tomhicken belongs to the Lehigh Valley, and this portion belongs to the Delaware, Susquehanna & Schuylkill, and the train going towards Gum Run, which is the Pennsylvania Railroad delivery point, uses the right hand track, which is the Lehigh Valley track, and the left hand track which the train would naturally take coming from Gum Run over towards New Boston Junction, is the Delaware, Susque- 5362
hanna & Schuylkill track, 8.03 miles.

Q. Is it the use of that track and the revenue which you have computed therefrom which is represented in this amount of $87,653? A. Yes.

Q. Will you explain the amount of $24,598.00, shown as merchandise revenue accruing to the Lehigh Valley Railroad from the Pennsylvania Railroad on freight interchanged with the Delaware, Susquehanna & Schuylkill Railroad? A. On merchandise freight coming to us from the Pennsylvania Railroad, we have derived a certain 5363
amount of revenue, and that revenue when divided on the basis of the track miles over which it passes on the Lehigh Valley Railroad, including this 8.03 miles track of the Delaware, Susquehanna & Schuylkill, so as to give the Delaware, Susquehanna & Schuylkill its pro rata based on the proportion which the 8.03 miles of track bears to the total track that this freight passes over, gives them this sum as assignable to the use of this Delaware, Susquehanna & Schuylkill track of 8.03 miles spoken of, $24,598.

Q. Can you explain the item of $127,175 as revenue 5364
shown on the merchandise freight accruing to the Lehigh Valley Railroad from the Delaware, Susquehanna & Schuylkill Railroad? A. At the time we purchased the Delaware, Susquehanna & Schuylkill stock, we consolidated the operation and handling of our merchandise freight so that it was impossible to tell just how much the revenue was on merchandise that goes into these points on the Delaware, Susquehanna & Schuylkill since we took that property over in November, 1905. In

5365 other words, the freight such as hay and grain and other things goes to the collieries on the line just the same as it did before, and uses the Delaware, Susquehanna & Schuylkill tracks, but we cannot separate it because we have never kept this separation. We have, therefore, found it necessary to go back to the Delaware, Susquehanna & Schuylkill books and obtain from them the last 28 months they operated, being from July 1st, 1903, to October 31, 1905, and in their ledger is clearly shown the merchandise freight which they received during that
5366 period, and I have assumed that the same revenue has accrued for the years since, because the conditions are substantially the same.

Q. If the production of the mines has increased—— A. That may be. I did not really go back. It was assumed; it is all I can do; I just did the best I could. Now, that actual revenue showed an average of $1,382.00 a month and we have had it for 92 months since, and I figured that the business was practically the same as it was before.

Q. The larger the production of the mines, the larger
5367 the production of collieries, the more in-bound freight goes to that colliery, is that not so? A. I suppose that is so; but at the same time, I am not familiar enough with those situations to tell you exactly.

Q. The estimated merchandise freight revenue which you have computed there is based upon the freight movement during the 28 months prior to October 31, 1905? A. Yes, sir.

Q. If I told you that the production of the Coxe Brothers' Mines had increased in that time, that the
5368 population of Drifton, and the other points reached by the Delaware, Susquehanna & Schuylkill Railroad had also increased in that time, it will be fair to assume that the merchandise freight revenue would also have increased in that time. A. I presume that it would, but we never gave that any consideration in the preparation of this statement.

Q. You wanted to be as conservative as could be in the preparation of this statement? A. Yes, I don't know that I thought about the thing at all; I just did the best I could, as I said before.

Q. Now, it has involved an operating cost on the Dela- 5369
ware, Susquehanna & Schuylkill Railroad to move the tonnage in respect to which you have computed this revenue, has it not? A. Which tonnage do you speak of? This merchandise tonnage that you were just speaking about?

Q. I was speaking of all of it. A. Yes, it has.

Q. Now, that operating cost is reflected in Statement A which accompanies this exhibit? A. Yes.

Q. Will you please explain the manner in which you arrived at the figures on Statement A? A. For State- 5370
ment A, I took the costs of the Delaware, Susquehanna & Schuylkill Company's maintenance of way and structures, as shown in Interstate Commerce Commission reports of 1904 and 1905, which was $44,197.67 for 1904, and $58,822.86 for 1905. I didn't have any other separate costs, therefore, I used that as being at least fair.

Q. Maintenance costs in general have gone up in the last nine years, have they not? A. Yes, somewhat; but I don't really believe those costs are out of the way.

Q. How did you arrive at the maintenance of equip- 5371
ment costs? A. The maintenance of equipment costs I could not get from the Delaware, Susquehanna & Schuylkill Railroad Company, because at that time they were operating the property, and they had a trackage contract with the Lehigh Valley Railroad Company, and had road engine and road service for their cars, which prevented me from utilizing their report in the preparation of my data. I, therefore, took the costs on our M. & H. Division at Hazleton, near which the Delaware, Susquehanna & Schuylkill is located, and used the report of our switching locomotives which perform this service, 5372
as shown by the Lehigh Valley Railroad.

Q. The maintenance of equipment on the Delaware, Susquehanna & Schuylkill would be substantially the same as the maintenance of equipment on the Lehigh Valley in the immediate vicinity? A. Yes, and for the identical service. It is what we call assembling and the collecting of coal.

Q. Now, will you explain how you arrived at the figures in respect of the cost of transportation? A. The

5373 cost of transportation is the exact cost which the Lehigh Valley Railroad had in 1906 for performing this service in the case of both. You will notice that I used six locomotives in the report, five in service and one in reserve, because they cannot work five engines at a time, but must have a sixth engine that lies idle for repairs while the five are in service. You will note that in the report spoken of, I put in six engines, five in service and one in reserve, the five engines really performing the service of the collecting and assembling
5374 from the breakers and mines, and that $42,571.04 is the actual sum that was paid to those particular crews of the Lehigh Valley Railroad for doing that work in 1906.

Q. Which otherwise the Delaware, Susquehanna & Schuylkill would have done? A. Surely.

Q. How did you reach the figures of overhead charges? A. I took the Delaware, Susquehanna & Schuylkill's annual report of 1904 and 1905; I took the general expenses of that Company at that time, and divided it with all the expenses—all the other expenses—that were not
5375 general expenses, and that gave me a percentage which it cost them for the general officers, you might say, and general expenses of their company, and which really is high, because it is a small road. That would have cost the Lehigh Valley less than half of that, but in order to be conservative I did raise it to the higher cost.

Q. How did you arrive at the figure of taxes? A. Taxes were obtained from the 1904 and 1905 taxes actually paid by the Delaware, Susquehanna & Schuylkill, and will be found in the report to the Commission.

5376 Q. Since 1905 has there been a gradual rise in the cost of labor on railroads—on the Lehigh Valley Railroad? A. Oh, yes; yes, there has.

Q. Has there been a gradual increase in the cost of transportation? A. Yes.

Q. In taxes? A. Yes, but not so much in taxes in the State of Pennsylvania.

Q. There has been, however, an increase in taxes in the State of Pennsylvania? A. Yes, there has been an increase in the State of Pennsylvania.

Q. Has there been an increase in the cost of the maintenance of equipment? A. Yes, but that maintenance of cars is based on the 1913 cost to the Lehigh Valley Railroad, because we could not get anything that was in use on the Delaware, Susquehanna & Schuylkill. 5377

Q. Do you consider that the operating costs which you have attributed to the Delaware, Susquehanna & Schuylkill as shown on this statement are equitable and conservative? A. I think it is as nearly correct as can be made.

Q. Is it reasonable and conservative? A. Yes. 5378

Q. Will you explain your manner of applying the operating costs to the tonnage handled? A. I obtained at the bottom of Statement A, an average cost for the tons of anthracite coal handled in 1904 and 1905, by the Delaware, Susquehanna & Schuylkill, and called it the cost which I have shown here, making 10¾ cents as the cost for the handling of the coal; I then took that 10¾ cents and applied it on the number of tons handled since the property has been taken over by the Lehigh Valley Railroad, and considered that that represented the cost to the Lehigh Valley Railroad of assembling and collecting coal in the district, which made a sum of $1,143,761.73. 5379

Q. Does the figure of $10,639,644, shown, include anything but anthracite? A. It does include merchandise and other freight.

Q. In other words, all the freight in respect to which you have taken credit for revenue? A. Yes, sir.

Q. Will you explain the item of $426,147.56, shown as interest accruing to June 30, 1913, on the amount of cash received as per statement B attached? A. Statement B is accumulative interest on the dividends which we have received from this Coxe Bros. & Co. stock and revenue from the Delaware, Susquehanna & Schuylkill less the interest which we have been compelled to pay from time to time on bonds outstanding. It will be seen that the total amount shown under the eight months to June 30, 1906, as having been received from the operation and dividends is $825,313.11, and that has been recapitulated by years, showing for the total years to June 30, 1913, 5380

5381 in the right hand column, $8,655,748.31, as received from this stock and operation of the railroad. From that I have deducted each period the cost of the operation of the Delaware, Susquehanna & Schuylkill, applying this on the basis of 10¾ cents for the tonnage handled during the period, arriving at a net income for each period, the total of which in the right hand column of the statement, shows the same to be $7,511,986.58. I have deducted the cash paid for interest during these periods, leaving the net cash receipts for each period shown op-
5382 posite that caption for the total time in the right hand column, referred to before, of $2,695,080.72. I have applied 4% interest for the average period each year that the money was received by the company; for instance, for the year ending June 30, 1907, I computed the average period that the money was in the hands of the Railroad Company as of January 1st, 1907, because the Railroad Company had collected this revenue in July, August, September and the months previous to January 1st and had similarly collected it in January, February, March and April, and the succeeding
5383 months to January, but the average date, in which the money was really in the hands of the railroad was, conservatively speaking, January 1st, and, therefore, it was for that reason I used that date. This interest applied at 4%, for instance, for the year ending June 30, 1907, would be found to be 6½ years, or 29.05 per cent. for the period, compounded; amount of the interest $131,427.64, and each year is treated in the same manner down to the last, in which there is no interest charged.

Q. Is that a fair and reasonable estimate? A. Yes.

5384 Q. Is it true, then, that the purchase of the stock of Coxe Brothers & Company and the Delaware, Susquehanna & Schuylkill Railroad and the Water Companies you have referred to, has resulted in a loss to the Lehigh Valley Railroad Company? A. No.

Q. To what extent has it involved an actual gain? A. An actual gain of $664,979.02 to June 30, 1913.

Q. The government in its petition in this case charges on page 47, that at times the Lehigh Valley Railroad has been obliged as guarantor to pay the interest on

some of these bonds—referring to the bonds of the De- 5385
lano Land Co., the Hazleton Coal Company, the Temple Iron Company, and the Wyoming Coal & Land Company, specifically, the bonds of the Temple Iron Company in 1899, 1900 and 1902; to what extent did the investment of the Lehigh Valley Railroad in the stock of the Temple Iron Company involve an actual profit to the Railroad Company? A. The Lehigh Valley Railroad Company appears to have paid over to the trustee of these bonds some payment, apparently to take care of the sinking fund provision of the bonds or the 5386
interest. The record is not very clear. These sums have been paid over at various dates from 1899 to 1902, and aggregate $154,135.98, the last payment being made in 1902, and this money was not returned to the Lehigh Valley Railroad until 1909, and at that time in the repayment only the principal was returned, no interest being paid on these advances so named. I have roughly prepared the interest at 5% compounded from the various dates at which it was paid to the dates the money was returned and the interest approximated $76,000, which would appear to be the utmost that the Lehigh 5387
Valley Railroad could be said to have lost from this part of the transaction.

Q. In other words, compounding the interest at 5% on all the amounts which they paid on those bonds, the total is about $76,000? A. Yes, sir. In 1907, in the carrying out the arrangement—I am not really familiar with the details because the records do not show it—the Lehigh Valley Railroad came into possession of the stock of the Temple Iron Company in the sum of $570,900.00.

Q. You mean you are not familiar as to how it came 5388
into possession? A. I don't know the details of this arrangement.

Q. You know it got here? A. I know it got here, yes; that was the sum which the stock cost the Lehigh Valley Railroad in 1907, and from that time up to June 30, 1913. From Exhibit No. 103 of the government, I believe it will be seen that the Lehigh Valley Railroad got about $120,000 in round figures, as their dividend from the Temple Iron Company's stock, until the court stop-

5389 ped the Temple Iron Company paying any dividends. In the closing up of the Temple Iron Company matter, however, the Lehigh Valley Railroad on June 30th, 1914, received additional dividends of $685,080.00 from the Temple Iron Company for that——

Mr. Warren: That was after the sale to Mr. Thorne.

The Witness: Yes, a short time ago. That was a dividend of about 120% paid over to the Lehigh Valley Rail-
5390 road Company. We got the money on June 30, 1914, so that from this stock the Lehigh Valley Railroad has derived a dividend from 1907 to 1914, inclusive, in the amount of $804,969.00. Deducting from this the $76,000 which they lost in interest on advances which were made and spoken of both, leaves $728,969. as a net profit which the Lehigh Valley Railroad Company, in actual cash, has received from this transaction up to the present time, or 128% on the stock of $570,900. which it has owned since 1907, or an average of 18% per annum on the stock
5391 since they acquired it.

Q. So that they received a net return per year of over 18% on their investment in that stock? A. Yes, sir.

Q. The Government Exhibit No. 103, which you prepared for them shows a return on the investment between June 30th, 1907, and June 30, 1913, in the whole, of how much? A. $119,889.

Q. That is included in the figures you have mentioned? A. I included that as in round numbers $120,000.

5392 Q. Did the Lehigh Valley Railroad receive any dividends from the Temple Iron Company in the year 1912? A. No.

Q. Did it receive any in the year 1913? A. No.

Q. The Lehigh Valley Railroad Exhibit No. 69 shows the Lehigh Valley Railroad Company as owning on June 30, 1914, stock in the Temple Iron Company, having a par value and a book value of $570,900, is that the stock to which you have referred? A. Yes, $570,900.

Q. Does the company still own that stock? A. Yes, sir.

Q. The Railroad Company has gotten back in the way 5393
of dividends an amount equal to what the railroad payed for the Temple Iron Company stock, and something more, has it not? A. Yes.

Q. Mr. Morrison, does the United States Government ship merchandise of any kind over the Lehigh Valley Road? A. Yes, occasionally.

Q. Does it pay for the mails transported by the Lehigh Valley Railroad? A. Yes, sir.

Q. How prompt is the United States Government in the payment of those freight charges? A. Very slow, 5394
about the slowest patron we have.

Mr. Machen: Objected to as irrelevant.

Q. About the slowest shipper on the line? A. I think it is.

Q. Does it take four and five months to pay its bills? A. More than that, I should think.

Q. Do you ever get your money inside of four months? A. I cannot say positively. Ordinarily they are very slow in paying. 5395

Q. What is the average time that it takes? A. I do not know, sir.

Q. Do they sometimes take six months? A. Yes, sir.

Q. Eight months? A. Yes, sometimes, I think they take eight months.

Q. Well, would it average six months? A. I don't know, sir.

Q. I show you the Answer to Question No. 21 in I. C. C. Docket 4914, which is in evidence in this case, as Government Exhibit No. 50, including the note thereto, and ask what amount was paid to the Lehigh Valley Railroad Company by the Lehigh Valley Coal Co., for the year ending June 30th, 1893? A. $11,057,076.46. 5396

Q. The government's petition in this case, on page 40, says that during the year ending June 30, 1893, the Lehigh Valley Coal Company repaid to the Lehigh Valley Railroad about the following sum, $557,676.46; what is the difference between that amount and the amount you have stated? A. $10,500,000.

Q. That is represented in the government petition by the word "about"? A. Yes.

5397 Q. In what form was the $10,500,000. paid by the said Coal Company to the Railroad Company? A. Paid by an issue of 5% gold bonds at par, $10,500,000.

Q. What amount was paid to the Lehigh Valley Railroad Company by the Coal Company in 1894? A. $450,000.

Q. What amount in 1895? A. Nothing.

Q. What amount in 1896? A. $246,953.33.

Q. What amount in 1897? A. $5,970,000.00.

Q. The government petition in this case says that in
5398 1897 the repayment amounted to $970,000, is that correct? A. No.

Q. In what respect is it incorrect? A. $5,000,000.

Q. How was the $5,000,000 paid? A. In 2nd mortgage 5% gold bonds of the Lehigh Valley Coal Company.

Q. What amount was paid in the year 1905? A. $2,180,000.00.

Q. The Government petition in this case says that the amount repaid in 1905, or the amount paid by the Lehigh Valley Coal Company to the L. V. Railroad Com-
5399 pany, in 1905, was $180,000, is that correct? A. No.

Q. To what extent is it incorrect? A. $2,000,000.

Q. How was the amount of $2,180,000 paid to the Lehigh Valley Railroad Company? A. Paid by 2,901 shares of capital stock of the Wyoming Coal & Land Company, par value $290,100.00, valued at $190,000.

Q. You placed it on your books at that amount? A. Yes, and Certificates of Indebtedness of the Lehigh Valley Coal Co. in the sum of $2,050,000.

Q. Is the amount of Certificates of Indebtedness there
5400 shown part of the Certificates of Indebtedness which have been referred to by the Government as owned by the railroad in the amount of $10,537,000? A. Yes, sir.

Q. Were those Certificates subsequently partly paid by the coal company—paid by the Lehigh Valley Coal Company? A. Yes.

Q. As to the amount not paid off by the Lehigh Valley Coal, were they refunded? A. Yes.

Q. How? A. By $7,500,000 of bonds.

Q. Bearing what rate of interest? A. 4% interest.

Q. Has the interest been paid? A. Yes, sir. 5401

Q. Has the interest on the Certificates of Indebtedness been paid from the time they were issued? A. Yes.

Q. Including the interest on the $2,000,000 you have here mentioned? A. Yes.

Q. The Government petition in this case, pages 41 and 42, charges that for over eight years the Lehigh Valley Railroad remitted to the Lehigh Valley Coal Company interest paid on the issue of $5,000,000 of 5% gold bonds, dated April 30, 1897, which amounts of interest were not less than $650,000. Did the Lehigh Valley Railroad 5402 Company ever give back to the Lehigh Valley Coal Company any interest received on bonds? A. No, I think not.

Q. The Government petition in this case, bottom of page 45 and top of 46, charges as follows: "Finally, even though these 4% bonds of Lehigh Valley Railroad paid a premium of $165,910.11, this was a mere gift to the Lehigh Valley Coal Company, and was immediately written to Profit and Loss, leaving the value of the bonds on the books of the railroad, as $7,500,000." The bonds referred to were the Lehigh Valley Coal Company 4% 5403 50 year debentures, received in part payment of the Certificates of Indebtedness which you have mentioned. Is it true that the railroad paid a premium for these bonds of $165,910.11? A. No.

Q. Will you state why the company wrote off on its books an item of, not $165,000, but $195,000, and in that connection I wish you would look at the statement relative to Seneca Coal Company contained on Lehigh Valley Railroad Company's Exhibit No. 59. A. This sum of $195,000 was in no sense a premium on the bonds 5404 spoken of, whatever.

Mr. Machen: That is a matter you explained when you were on the stand before, isn't it?

The Witness: I don't think I explained it on the stand.

Q. Explain it now on the stand. A. This $195,000 is a sum of $200,000 which was written down on the value of the Seneca Coal Company stock in 1901, four years

5405 before the property was sold to the Lehigh Valley Coal Company, and for which Certificates of Indebtedness were taken in payment therefor. The bonds in question were payment of the par value of the Certificates of Indebtedness at par. There was no premium paid on them whatever. The property turned over to the Coal Company originally cost some $200,000 more when it was bought some four or five years before, during which four or five years the property had been continuously mined, and was sold to the Coal Com-
5406 pany at practically the book value that it stood on the Railroad Company's books at the time it was sold, and the $195,000 is obtained by a deduction of about $5,000 which the Lehigh Valley Coal Company made on a sale of the Wyoming Coal & Land Company, thus offsetting $200,000 reduction in value of the Seneca Coal Company to that extent.

Q. And had no relation whatever to the securing of these bonds in 1912? A. None whatever.

Mr. Machen: That $195,000 premium——

5407 Mr. Boles: You can examine him later, Mr. Machen.

Mr. Machen: I wanted to get it straight now.

Q. The Government petition in this case, page 22, says in reference to the Seneca Coal Company, its production in 1901 was about 358,626 gross tons. In that year the Lehigh Valley Railroad Company bought its entire capital stock for $1,000,000, and in 1905 sold the same to the Lehigh Valley Coal Company for $773,-
5408 000. Are they the figures shown in your statement, Lehigh Valley Railroad Exhibit No. 69? A. Yes, sir.

Q. And the difference between those figures is the amount shown in that statement, as the amount that was written down during the period of our holding it? A. Yes, sir.

Q. Of the Lehigh Valley Railroad's holding of it? A. Yes, it held the stock for four years, and in one of those years its production amounted to, according to the government's own petition, to 358,626 gross tons.

Q. During that time, or during the time of the rail- 5409
road's ownership, it wrote down the amount you have mentioned because of the mining of the coal from the land to which you have referred? A. I presume that was the case.

Q. Do the rules of the Interstate Commerce Commission require you to write down the value of securities held when you have actually knowledge of the depreciation thereof through different sources?

Mr. Machen: Objected to, because the rules of the Interstate Commerce Commission are the best 5410
evidence of what they require.

A. Yes.

Cross-Examination by Mr. Machen:

Q. In the earlier part of your examination Mr. Morrison, you testified as to the reason for the writing down of the book values of securities indicated in red ink on the table offered as Lehigh Valley Railroad Company's Exhibit No. 69? A. Yes. 5411

Q. What, if anything, do the books of the Lehigh Valley Railroad Company show as to the reason for these various reductions in the book value of securities; simply what is shown upon your statement? A. Just about.

Q. And that is all that your books show as to the reason for these reductions in the book values? A. Yes.

Q. Then your books indicate nothing as to the reason for the reduction other than the reason set forth in your table offered as Lehigh Valley Exhibit No. 69? A. No. 5412

Q. Then your testimony on direct examinations of these writings down, were simply due to what one might call caprice. A. I didn't say that. I said this: I said they were written down much like a merchant writes down his assets. I said that for the reason that the writings down were in November, 1880, in November, 1882, November, 1889, November, 1879, that was at the close of the fiscal year of the Company at that time, when they would be in position to know the net surplus, which would be available at the end of the year.

5413 Q. And when they were making up their annual report? A. Yes.

Q. And making up the values of their assets? A. Yes.

Q. And everything else is mere deduction on your part, and inferences from your facts? A. That was the only fact I had to adduce, what I was asked to pass an opinion upon.

Q. You said, or I thought you said, under direct examination, that in some instance or instances, the Lehigh Valley Coal Company issued to the Lehigh Valley Rail-
5414 road Company its own stock at par in excess of the cost of the securities transferred by the Railroad Company to the Coal Company, is that true? A. In the case of the Luzerne Coal & Iron Company, in 1870, you will see that the cash cost to the Lehigh Valley Railroad of that stock was $498,614.00; the Coal Company gave them $600,000 par value of their stock for that.

Q. And that is the only instance of the kind in the history of the Company? A. I could not answer that without carefully scrutinizing the statement.

Q. Carefully scrutinize it then. A. (After examination
5415 of the exhibit.) That is the only case.

Q. That was in 1875 at the time of the formation of the Lehigh Valley Coal? A. It was in 1875; I don't know about the formation of the Coal Company.

Q. Doesn't it so appear from this very table that it was? A. I am not speaking of my actual knowledge, but the statement shows that the Lehigh Valley Coal Company was formed in 1875.

Q. Now, I ask you to look up the Railroad Company's Exhibit No. 71 and tell me whether or not the corpora-
5416 tions there mentioned as companies to whom under the head of other companies the Lehigh Valley Railroad Company made advances between 1894 and 1902, were companies controlled through stock ownership by the Lehigh Valley Railroad Company. A. Some of them were.

Q. Which of them? A. The Glen Summit Hotel & Land Company, Locust Mountain Water Company, Hazel Water Company, Wright Township Water Company, and Hazleton Water Company. None of the others were.

Q. Did the Lehigh Valley Railroad Company have any 5417
investment in any stock of the Buffalo, Thousand Islands and Portland Railroad? A. Yes. It was a joint owner with the New York Central interests; I don't know which one of the lines.

Q. Did it have any interest in the Lehigh Salt Mining Company? A. I don't know.

Q. Look at the Railroad Company's Exhibit No. 3, being a statement of property investment and income account of the Lehigh Valley Railroad for certain years, I would like you to explain how you arrived at the figures which 5418
you have put under the head of property investment? A. That figure was arrived at by taking all of the property which the Lehigh Valley Railroad Company owned, including the subsidiary railroads making up the system, and the actual cost shown in the record, and the exclusion of all discounts therefrom, stock issues, that did not represent actual value or cash received therefrom, or all the items of what is commonly known as "water," in the capital of the Railroad Company, and added thereto the cost of improvements, betterments, equipment, and other capital items which had been charged to 5419
our income, profit and loss account, and reserve account. That sum represents as nearly as anybody can determine it, the actual cash that has been put into the property of the Lehigh Valley Railroad, which is used by the public for the transportation of passengers and other business, except that it does not include certain expenditures, such as taking out 50 or 60 lb. rail in the earlier years, and substituting therefor 70 or 80 lb. rail, or which has gradually worked up until it is now 100 or 110 lb. rail. None of that increase in the metal that has gone into 5420
the property has been included, except in more recent years when we could really get at the exact information.

Q. Now, is this figure made up from the investigation conducted by Mr. Dunn, and testified to yesterday? A. This data was prepared by me, and examined carefully by the representatives of Haskins & Sells, and where any corrections were to be made we discussed what they were and adjusted them on the most conservative basis.

5421 Q. So that you are now in complete unison? A. Yes, I should further state that this item includes the cash which is in bank.

Q. The item which you explain in the footnote, the cash and working assets in excess of the working liabilities? A. Yes.

Q. How much does that amount to each year, something like $10,000,000, doesn't it? A. I have no doubt it does; something like that.

Q. What does the Company do with the cash it has on
5422 hand? A. Well, it pays for any equipment which is buys.

Q. Yes, but I mean to say where does it keep its funds? A. It keeps its funds in 50 or 60 different depositaries.

Q. Different banks? A. Yes.

Q. Doesn't it receive any interest from that? A. It receives about 3% a year in nearly all instances on daily cash balance in bank.

Q. Does this item of property investment include the estimated value of the railroad and subsidiary lines in the Lehigh Valley system? A. No, sir; it represents the actual value; actual cash that was originally put into
5423 the cost of the——

Q. I mean to say, however, it includes not merely the Lehigh Valley Railroad Company's property, but the physical properties of the other companies in the system, such as the Lehigh Valley Railway, the Lehigh Valley Railroad Company of New Jersey, and the Delaware, Susquehanna & Schuylkill, etc., doesn't it? A. Yes.

Q. How about the leased lines, lines of railroad leased to the Lehigh Valley Railroad system? A. That is also included.

5424 Q. You include in this statement what you consider to be the cost of the leased lines? A. We have the original book of each of our lines, including the leased lines, and from those showing the cost as indicated in those books as the original cost of the property, this statement has been prepared.

Q. That is to say, the original cost to the stockholders of the lessor, or to the security holders of the lessor, plus any improvements which have been made to the road by the Lehigh Valley Railroad Company, as lessee.

A. The Lehigh Valley Railroad owns the entire common 5425
stock, and therefore, the owner and lessee, you might say, of all its subsidiary lines, except the Lehigh & New York, of which it is a large majority stockholder, and the State Line and Sullivan R. R., which is another.

Q. That is not included? A. No, sir, because we do not own that.

Q. Did you include the Lehigh & New York in it? A. Yes.

Q. Did you include the valuation of that road, or, did you include what you considered to be the original cost 5426
of that road to these security holders of the lessor Company? A. Yes, the original cost of the Lehigh & New York was put in here as a part of the cost of the system of the Lehigh Valley road system of lines.

Q. Upon what basis is the Lehigh & New York Railroad leased by the Lehigh Valley? A. It is leased on the basis of paying back to the stockholders of the Lehigh and New York, any profits which we may make from the operation after payment of the interest charges.

Q. It is on a basis of a fixed rental? A. No, sir, not 5427
at all.

Q. I find in the annual report of the Lehigh Valley Railroad Company to the Interstate Commerce Commission, for the year ending June, 1913, the following railroads leased to the Lehigh Valley: The Easton & Northern, The Lehigh Valley Railroad Company of New Jersey, the Lehigh Valley Railway Company, the Lehigh & New York Railroad Company, the Loyalsock Railroad Company, the Montrose Railroad Company, the Pennsylvania & New York Canal & Railroad Company, the Schuylkill & Lehigh Valley Railroad Company, the State Line and Sullivan Railroad, and the Raritan Terminal & Tranportation Company. Now, are all those companies leased to the Lehigh upon the basis of payment to the lessors of the entire net income of the net earnings of the property? A. No, the only one that way is the Lehigh & New York; the others are operated and owned lock, stock and barrel by the Lehigh Valley Railroad, except the State Line & Sullivan. 5428

5429 Q. How about the Schuylkill & Lehigh Valley Railroad? A. We own that. We own the entire capital stock of it, and we operate it just as if it was a piece of the Lehigh Valley Railroad, and its earning all go into that report.

Mr. Boles: That is known as the Pottsville Branch?

The Witness: I don't know whether they call it the Pottsville Branch or not.

5430 Q. How about the Easton & Northern? A. The Easton & Northern, that is owned by the Lehigh Valley Railroad. We own the entire capital stock. That report shows that.

Q. Where the Lehigh Valley Railroad Company has acquired a railroad of another company at foreclosure, for example, had you, in your figure for property investment, in this Exhibit No. 73, included the cost of the road to the Lehigh Valley Railroad at foreclosure sale, or have you included the estimated original cost of the owners of the securities of the road whose mortgage
5431 was foreclosed? A. We have included this as the actual cost of the property.

Mr. Boles: What do you mean by "this?"

The Witness: We have included in this statement actual first cost of the property. What it cost the Lehigh Valley Railroad Company for the purchase of the stock, we paid no attention to that. If we bought it at 15 cents a share we paid no attention to it; we took it at what it
5432 cost, on the theory that the public were not interested in whether the stockholder made money by his venture or lost money by his venture.

Q. Yes, but I want to get at the facts. If the Lehigh Valley Railroad Company purchased a railroad for, we will say $50,000, which had been originally capitalized at $1,000,000, and sold under foreclosure, and bought under the hammer, and the Lehigh Valley or some one in its interests, bought it for $50,000, then you would

include in your item the cost, of property investment, 5433
$1,000,000 and not merely $50,000?

Mr. Boles: I object to the question as purely hypothetical and not shown as having any bearing whatever to the Lehigh Valley Railroad system, or any of its subsidiaries.

The Witness: No, we would not have done that at all.

Q. What would you have done in such case as that?
A. If we bought a piece of railroad whose books showed 5434
it was capitalized at $1,000,000, we would not concern ourselves with what it was capitalized at at all, but we would look at what it cost to construct the railroad and if those bonds or the stock had been issued for $1,000,000 and sold for $100,000 there was $900,000 of water in it, we would ignore the $900,000, and put what it actually cost for grading and rail laid, and all that kind of expense.

Q. If a railroad were built at a cost to the original
owners of $1,000,000, represented by $90,000 of bonds 5435
and $100,000 of capital stock and that railroad was foreclosed and sold to the Lehigh Valley Railroad Company for $50,000—I am using these figures simply as an example—you would just include in your table, or include in the figures making up your table for property investments, the sum of $1,000,000, wouldn't you?

Mr. Boles: Objected to as hypothetical, and not shown to have any relation to any of these acquisitions.

5436

Witness: No, we would not have done that.

Q. What would you have done in such a case as that?
A. We would have paid no attention whatever to the ownership of stock——

Q. I asked you to pay no attention whatever to the ownership of stock; I asked you if it had cost the original company whose property was sold under foreclosure, $1,000,000 in cash and was sold at foreclosure sale, under the hammer, for $50,000 to the Lehigh Valley Railroad

5437 Company, then you would include as the cost of that property among the various items going to make up your total for the property investment, in this Exhibit No. 73, the actual figures of $1,000,000, and not the $50,000, isn't that correct? A. If that $1,000,000 was in cash and was shown to have been expended——

Q. Yes, that is the question. A. I am going to answer it that way. If that million dollars of cash was shown to have been actually expended in building this property which we acquired for $50,000 under foreclosure,
5438 we would have been compelled to put it in here at the actual amount of expenditure for construction.

Q. You would have put it in as one million dollars? A. We would.

Q. It does not represent, therefore, the cost to the Lehigh Valley Railroad Company?

Mr. Boles: Objection on the basis heretofore stated.

Q. Go ahead and answer the question. A. It does not
5439 represent the cost to the Lehigh Valley Railroad of these properties.

Q. Nor the cost to security holders of the Lehigh Valley Railroad, stock and bondholders?

Mr. Boles: Same objection.

A. No, it does not.

Q. Now, take another case. Suppose the Lehigh Valley Railroad Company bought some capital stock—the entire capital stock—of some other railroad corpora-
5440 tion at, say, 50c. on the dollar, par value, and suppose it were found from your examination of the books, the best you could make, that property of that company thus bought, or whose stock was thus bought at original cost that the company, the par value of its stocks and bonds, you would have included the entire cost to the original company and not the cost to the Lehigh Valley Railroad Company, isn't that so?

Mr. Boles: Same objection.

A. We would have put into its cost the exact cash 5441
cost to the people that built the railroad, and, however, I wish to say that there is very little of these hypothetical things that you are quoting, because the Lehigh Valley Railroad Company built nearly its entire property, has built this property itself; it has built it with the cash of the Lehigh Valley Railroad which it has advanced and on companies which it has incorporated and it has very little, practically nothing, of these hypothetical cases which you refer to which would be applicable to any of the items shown in that $205,812,058.35. 5442

Q. The amount of that is not now in question——

Mr. Boles: Oh, yes, it is.

Mr. Machen: That is a matter for your re-direct examination and you can bring that out if you please, the facts that justify it.

Mr. Boles: You have not shown any such basis at all, or even purported to show it.

Q. Did you include in your items of property investment in this table, Lehigh Valley Railroad Exhibit No. 73, the cost of property bought by the Lehigh Valley Railroad Company out of accumulated earnings? A. Yes. 5443

Q. Have any expenditures which under the present classification prescribed by the Interstate Commerce Commission would be included as capital expenditures, heretofore been charged by the Lehigh Valley Railroad Company to operating expenses? A. Yes.

Q. Have such sums so expended been deducted from the operating expenses as shown by the income accounts of the various companies before arriving at the figures 5444
shown for operating expenses in your table contained in Lehigh Valley Railroad Exhibit No. 73? A. Yes, sir.

Q. Have there been any such cases from June 30th, 1907, that is to say, cases of improvements classified by the Interstate Commerce Commission as capital expenses which have been charged up to operating expenses by the Lehigh Valley system? A. No.

Q. In order, then, to arrive at the figures shown in your Lehigh Valley Railroad Exhibit No. 73 under the

5445 head of total operating revenues and operating expenses, it is only necessary to add up the items reported as operating expenses by the Lehigh Valley Railroad Company and the other companies in the Lehigh Valley system making operating reports to the Interstate Commerce Commission? A. No, that would not give you the information. The operating revenues here shown should be the operating statement of the Lehigh Valley Railroad plus the operations—outside operations—which includes the Lehigh Valley Transportation Co.,
5446 and the Bee Line operations around on the Sound and the lighterage line across the harbor; in other words, all of the operations of the various parts of the Lehigh Valley system including the outside operations are in operating revenue and, in like manner, in operating expenses and the net operating revenue should be the net operating revenue of the Lehigh Valley Railroad plus the net outside operations and some separately operated properties like the Bee Line.

Q. Is the Bee Line a separate company? A. It is the Lehigh Valley Transportation Company.

5447 Q. That is the only water transportation company which the Lehigh Valley Railroad controls? A. Yes, that is the only water transportation company. It is in here too.

Q. That is the only water carrier whose operations are included in this income statement? A. Lehigh Valley Transportation Company——

Mr. Boles: And Morris Canal.

The Witness: Morris Canal is not in here.

5448 Q. What other companies besides the Lehigh Valley Railroad Company and the Lehigh Valley Transportation Company are included in this statement; that is to say, what other companies are there who operate their roads and whose earnings and expenses it is necessary to add up in order to arrive at the figures you have given? A. None but the Lehigh Valley Railroad and the outside operations of the Lehigh Valley Railroad.

Q. Which are they? A. They include the Lehigh Valley Transportation Company and the dining car department and operations of that kind.

Q. The dining car department? A. For the dining 5449
cars running up and down the road; that is an outside operation of the Lehigh Valley Railroad and it is a part of our equipment. But the Interstate Commerce Commission has us report that under outside operations and it is so reported and it will be shown in the Commission's report. All of those items are in the report of the Lehigh Valley Railroad. There is nothing here that is not in the Lehigh Valley Railroad Report to the Interstate Commerce Commission.

Q. Please look at the annual report of the Lehigh Val- 5450
ley Railroad Company to the Interstate Commerce Commission for the year ending June 30th, 1913, and state what was the ratio of operating expenses to earnings during that year? A. 67.62 per cent.

Q. Now, refer to your exhibit, Lehigh Valley Railroad Exhibit No. 73, and tell me what was the ratio of operating expenses to total operating revenues as it figures there, operating revenues and expenses respectively are given in your exhibit? A. 70.18 per cent.

Q. Then the outside operations which you have in- 5451
cluded have caused an increase in the ratio of expense to earnings of about—— A. 2½ per cent.

Q. Please look at this same report and tell me what is the difference between the total operating revenues as given in that report and the total operating revenues as given in your statement? A. I cannot prove these figures up. The expenses and gross revenue from the Interstate Commerce report here——

Q. I am not asking you that. A. What is the question?

Q. (Question read.) A. That is gross operating 5452
revenue you speak of?

Mr. Boles: Yes.

A. The difference $2,499,072.49.

Mr. Boles: Which way?

The Witness: More in my statement than there is in the operating revenue as indicated on page 39 of the Interstate Commerce Commission report.

5453 Q. You have that wrong. Let me see where you take it from? A. Page 39, revenue.

Q. What was the difference between the operating expenses in the same report and the operating expenses in your table contained in Lehigh Valley Railroad Exhibit No. 73 for the same year, that is, the year ending June 30, 1913? A. That is $2,854,583.67 more on the statement which I have prepared than on the reports of the Interstate Commerce Commission referred to.

Q. Then these outside operations resulted in a net loss to the Railroad Company? A. Yes, sir.

5454 Q. If the operations had been excluded from your statement your total operating revenues would have been less by $2,499,072 and your operating expenses would have been less by $2,854,067, making a total gain in net revenue of nearly $400,000, isn't that so? A. No, operating revenue had been excluded. Gross revenue reported on the statement would have been $2,494,072.49 less than they were reported on the statement, and if the outside operations had been similarly excluded from operating expenses the expenses would have been $2,-

5455 854,583.67 less than they were, and the net revenue to the company as shown on the statements would have been $355,511.18 more than there was on the statement.

Q. Now, referring to Lehigh Valley Railroad Exhibit No. 54, Mr. Morrison, why do you commence your calculations as to cost of this transaction, namely, the purchase of the capital stock of Coxe Brothers & Company and Delaware, Susquehanna & Schuylkill Railroad Company and certain water companies with the figure $19,-000,000, being the amount of bonds, 4 per cent. bonds, issued by the Railroad Company at about that time

5456 when only a portion of these bonds was used in payment of the purchase price of the securities which I have just mentioned? A. Those bonds are a mortgage on this property. Now, that is the sum which we have got to account for, $19,000,000 worth of securities we gave out and on which we are paying interest——

Q. And with that total amount of $19,000,000 raised by the issue of bonds and $82,000 in cash, you first bought 1,000 steel coal cars and at a cost of $1,099,000? A. No, we did not first buy those coal cars.

Q. I don't say you first bought them, but you first 5457
deducted—— A. Deducted that as applicable to the purchase cost of our outside property which we got.

Q. And leaving the total amount which as you say you are to account for as $17,983,397.52 which you have to account for? A. Yes.

Q. Now, in point of fact, did not the Lehigh Valley Railroad Company pay for the Coxe properties, that is to say, stock of Coxe Brothers and the water companies and the Delaware, Susquehanna and Schuylkill Railroad Company $18,400,000? A. No, sir; this is what they 5458
paid——

Q. Now, I ask you to look at the contract which has been offered in evidence, Government Exhibit No. 42, which witnesseth that the parties of the first part, namely, the members of the Coxe family, agreed to sell the entire capital stock of Coxe Brothers & Company and of the Delaware, Susquehanna & Schuylkill Railroad Company and of the Beaver Meadow Water Company, the Tomhicken Water Company, and the Oneida Water Company for the sum of $18,400,000, the said sum to be paid as follows: the sum of $6,400,000 in cash on the 5459
first day of November, 1905, and the balance of $12,000,000 in bonds at par as hereinafter provided, due and payable as hereinafter provided, and see whether it does not provide in terms what I have read? A. I presume it does so provide.

Q. Don't answer you presume it does? A. It does provide according to that reading, but that does not agree with the general books of the Lehigh Valley Railroad, and I am interested in what we paid; these figures and that cost shown there is what we paid for this prop- 5460
erty. That is what I am swearing to; I don't know what we agreed to. I should be very glad to show an explanation of the differences which is shown in there and the figures which I have given, but I stand by this statement as agreeing with the general books of the Lehigh Valley Railroad of which I am the general auditor.

Q. Do you mean to say that your books do not show that $6,400,000 was paid in cash on the first day of

5461 November, 1905, and the balance in bonds at par? A. I don't know whether they show that or not, but I do know that they show net figures which I have shown here, which are the exact, absolutely exact and accurate statements of the cost to the Lehigh Valley Railroad of this property. There may have been shown that payment as a gross and—something else may have come back; there may be several transactions in there that I will be glad to explain to you if you wish, but I make the statement that that is an exact and accurate state-
5462 ment of the cost to the Lehigh Valley Railroad Company on its cash book and its general books of the property which is represented here.

Q. Have you got the books in your custody showing the—the books of original entries—showing the actual amount paid by the Lehigh Valley Railroad Company to members of the Coxe estate? A. Yes, sir.

Q. Have you got the receipts from the Coxe estate for the bonds which were delivered to them in payment of the purchase price? A. I don't know whether I have or not. I don't think I have.

5463 Q. Who has them then, the treasurer? A. I don't know who has them.

Q. Now, looking at Lehigh Valley Railroad Exhibit No. 74, let me see if I understand you correctly? The purchase price paid to the Coxe estate was $18,400,000, payable $12,000,000 in bonds and the balance in cash. The Railroad Company delivered these bonds to the members of the Coxe estate and paid them the $6,400,000 in cash, that is correct, isn't it? A. Yes.

Q. They were also at that time under contract by the
5464 Delaware, Susquehanna & Schuylkill Railroad Company to buy 1,000 steel coal cars upon which the Delaware, Susquehanna & Schuylkill Railroad Company had made a payment of about $400,000 to the manufacturers—to the vendors.—The Lehigh Valley Railroad Company then paid the balance or about $600,000—— A. $694,000, practically the balance of the $1,094,430.68 was paid by the Lehigh Valley.

Q. Out of the proceeds of the $19,000,000 of bonds? A. Yes.

Q. So that the $19,000,000 of bonds which the Lehigh 5465
Valley Railroad Company issued paid for the stock of Coxe Brothers & Company, the Delaware, Susquehanna & Schuylkill Railroad Company and these various water companies, and also paid the balance due upon the contract of the Delaware, Susquehanna & Schuylkill Railroad Company for these steel coal cars? A. Yes, sir.

Q. Now, after Coxe Brothers & Company was purchased by the Lehigh Valley Railroad the current assets of Coxe Brothers & Company were simply turned over bodily to the Lehigh Valley Railroad Company, weren't 5466
they, in cash? A. They bought the Coxe Company as a going concern and it included cash in bank and every thing that they had.

Q. And that was simply turned over to the Lehigh Valley Railroad Company as the evidence already shows, I think, as the owner of the entire capital stock? A. Yes; that represented the item which is shown in the papers as $2,467,188.26.

Q. That left Coxe Brothers & Company and the Delaware, Susquehanna & Schuylkill Railroad Company destitute of working assets, didn't it? A. Yes. 5467

Q. How has working capital been supplied to Coxe Brothers & Company since that time? A. They have accumulated their own working capital by operation of the property since that, so far as I know.

Q. They had to have something to start with, didn't they? A. I don't know what they had, I am sure. I am really absolutely ignorant about that.

Q. Turning to sheet No. 2 we come now to your effort to restate an income account for the Delaware, Susquehanna & Schuylkill Railroad, isn't that so? A. Yes. 5468

Q. You were trying to ascertain what the Delaware, Susquehanna & Schuylkill would have earned if it had kept any income account and had been preserved as an independent corporation, isn't that so? A. Yes.

Q. At the time the Delaware, Susquehanna & Schuylkill was acquired by the Lehigh Valley it had, as your papers show, trackage rights for a term of years over the Lehigh Valley Railroad for the transportation of anthracite coal from Lumber Yard Junction to Perth Amboy? A. Yes.

5469 Q. Now, won't you please look at the annual reports of the Lehigh Valley Railroad Company to the Interstate Commerce Commission for the years ending June 30th, 1902, 1903 and 1904, and state what was the amount of rental paid to the Lehigh Valley Railroad Company by the Delaware, Susquehanna & Schuylkill Railroad Company for this trackage right in each year? A. 1902, $285,129.92; 1903, $270,743.55; 1904, $304,723.14.

Q. Is this information obtainable from the annual report of the Lehigh Valley Railroad Company to the In-
5470 terstate Commerce Commission for the year ending June 30th, 1905? A. No; it does not show separately.

Q. It simply shows a lump sum for all rentals received by the Lehigh Valley Railroad Company, doesn't it? A. Yes; on page 41.

Q. And the net result of your hypothetical statement of an income account for the Delaware, Susquehanna & Schuylkill Railroad for the years from June 30th, 1905, to the present time is a total revenue from operation of $5,325,450, isn't that it? A. Yes.

Q. And the total operating expense $1,143,761.73? A.
5471 Yes, sir.

Q. What is the ratio of operating expense to earnings as shown by those figures? A. 21.48 per cent.

Q. What was the ratio of operating expense to operating revenues on the Delaware, Susquehanna & Schuylkill for the last year in which it was operated separately? A. 88.95 per cent.

Q. That is, for the year ending June 30th, 1905? A. As shown by their reports to the Interstate Commerce Commission.

5472 Q. Now, won't you please state what was the ratio of operating expenses to operating revenue on the Delaware, Susquehanna & Schuylkill Railroad for the four fiscal years immediately preceding 1905? A. For the year ending June 30th, 1904, as reported to the Interstate Commerce Commission by the management of the Delaware, Susquehanna & Schuylkill Railroad their operating expenses were 86.90 per cent.; similarly for 1903 they were 82.90 per cent.; 1902 they were 85.89 per cent. and for the year ending June 30th, 1901, they were 86.72 per cent.

Q. Now, reverting to the details of your attempted re- 5473
statement of the income account for the Delaware, Susquehanna & Schuylkill Railroad Company from the time of its acquisition by the Lehigh Valley Railroad, the first item of revenue is $5,086,024, being what you estimate would be the share of the Delaware, Susquehanna & Schuylkill Railroad Company in the traffic interchanged with the Lehigh Valley Railroad if the earnings had been divided between the Delaware, Susquehanna & Schuylkill and the Lehigh Valley Railroad on the same pro rata basis, isn't that so? A. No, it represents the actual 5474
payment by the Pennsylvania Railroad to the Lehigh Valley Railroad for the transportation of the coal that was turned over to the Pennsylvania Railroad during that period in cash as their proportion of the revenue on that business delivered to them, being $439,947. The remaining portion being the amount which in like manner the Lehigh Valley Railroad would have paid over to the Delaware, Susquehanna & Schuylkill Railroad under its division sheet or, in other words, its contract, if it had turned over in like manner to it at the Stockton Junction the tons of coal which it turned over in that 5475
period.

Mr. Boles: The division sheet was an actual sheet?

The Witness: An actual sheet, and they would have paid that cash to them and did pay that cash in those rates and those proportions prior to the time that the property was taken over by the Lehigh Valley.

Q. Which statement are you referring to now? A. I 5476
am referring to the $5,086,024, the details of which are shown on statement "C." It shows the total in one column which was turned over to the Pennsylvania Railroad Co., actually turned over to them and we received in cash the sum I stated, and if that 9,540,000 tons had been turned over to the Lehigh Valley Railroad at Stockton Junction by Coxe Brothers, or by the Delaware, Susquehanna & Schuylkill, we would have paid to them the remaining portion of $5,086,024, if the

5477 railroad property had not been bought by the Lehigh Valley. There is absolutely no doubt about that. It is a definite share of the freight rate which was filed with the Interstate Commerce Commission at that time.

Q. Do you mean to say that the Delaware, Susquehanna & Schuylkill Railway entered into a joint rate with the Pennsylvania Railroad for the delivery of coal at Gum Run? A. Yes, sir.

Q. And that the Delaware, Susquehanna & Schuylkill's proportion of the amount collected under that
5478 tariff from November, 1905, to June, 1906, amounted to 199,808 tons? A. Shows they collected $105,113; that was what the Lehigh Valley Railroad as the owner of the Delaware, Susquehanna & Schuylkill Railroad collected from the Pennsylvania Railroad in cash for the coal turned over to it moving over the Delaware, Susquehanna & Schuylkill Rails alone from the point of origin to Gum Run, where it was delivered to the Pennsylvania Railroad.

Mr. Boles: 199,808 tons was delivered to the
5479 Pennsylvania Railroad?

The Witness: And 719,051 tons is shown delivered to the Lehigh Valley Railroad, and the two together make the gross shown in the company's report of 918,859 gross tons.

Hearing adjourned to Thursday, July 23rd, 1914, at ten o'clock A. M.

5480

UNITED STATES DISTRICT COURT, 5481

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,
Petitioner,

against

LEHIGH VALLEY RAILROAD COMPANY, *et al.*,
Defendants.

Before
B. W. Brown, Esq.,
Special
Examiner. 5482

New York, July 23rd, 1914.

Hearing resumed pursuant to adjournment.

Appearances same as before.

Julius I. Morrison, recalled, testified as follows:

Cross-Examination (Continued) by Mr. Machen: 5483

Q. Mr. Morrison, according to your reconstructed income account of the Delaware, Susquehanna & Schuylkill Railroad, you show that during the seven years and a fraction of a year which have elapsed since November, 1905, down to June 30th, 1913, the Delaware, Susquehanna & Schuylkill Railroad Company has earned, or would have earned, if its accounts had been kept separately, $4,181,688.27, isn't that so? A. Yes, sir.

Q. And that is about 270 per cent. on the capital stock of $1,500,000, isn't it? 5484

Mr. Boles: Is that net or gross earnings you are speaking about?

Mr. Machen: This is net.

The Witness: Yes, sir.

Q. Or in other words, more than 33.5 per cent. per annum? A. Yes, sir.

Q. During that period? A. Yes, sir.

5485 Q. Now, you also show from your statement that the purchase of the Delaware, Susquehanna & Schuylkill Railroad has been considerably more profitable to the Lehigh Valley Railroad than the purchase of Coxe Brothers & Company, don't you? That is to say, you show a net revenue accruing to the Lehigh Valley Railroad Company from the D., S. & S. according to your reconstructed income account of $4,181,688.27, whereas the net revenue accruing to the Lehigh Valley as owner of the capital stock of Coxe Brothers & Company is shown to be only $3,330,298.31. A. Yes.

5486 Q. That is to say you think that the purchase of the D., S. & S. was a much more profitable transaction than the purchase of Coxe Brothers & Company? A. This is not what I think. I did not say that is what I thought. I say this is the way the property results figure out during the period which it has been owned by the Lehigh Valley Railroad.

Q. Well, do you believe these results to be correct? A. Yes, sir.

Q. Well, then, you believe that the purchase of Coxe
5487 Brothers & Company was less profitable to the railroad than the purchase of the D., S. & S.? A. So far, yes, sir.

Q. Now, coming down in detail to your reconstructed income account, let us first take up the earnings, gross earnings. Looking at Statement C, I want to ask you to explain a little more in detail. If I understand this Statement C correctly, you figure that during the eight months, ending June 30th, 1906, the D., S. & S. delivered to the Pennsylvania Railroad at Gum Run 199,808 tons of coal? A. Yes, sir.

5488 Q. And that as their proportion of the joint rate upon that freight, received $105,113? A. Yes.

Q. Now, was that a joint rate, or was it a local rate? A. It was a joint rate.

Q. It was their proportion of a joint tariff at that time filed with the Interstate Commerce Commission, was it? A. Well, if the laws provided in 1905 and 1906 for a filing of the tariff, it was, yes, sir.

Q. Well, you know perfectly well they did provide.

Mr. Boles: Oh, no, not before 1906.

The Witness: I don't know whether they did or not. 5489
Anyway, I will say this, since the law has so provided, those tariffs have been filed with the Commission.

Q. Now, certainly the great majority of the years, on this statement, therefore, it has been filed with the Commission? A. Yes, sir.

Q. Do you know the number of the tariff? A. No, sir; I can not tell you the number.

Q. Or the division? A. Let's see (Examining paper).

Q. Was the same tariff in effect prior to the purchase of the D., S. & S. by the Lehigh Valley? A. That was 5490
the tariff that was in effect, that is my understanding, that that tariff was in effect at that time. Wait a minute until I see what I have got with me to assist my memory (Examining paper). The D., S. & S. received 30 per cent. of the rate on the coal delivered to the Pennsylvania Railroad.

Q. No matter where it was, to what point it was destined? A. That is what my memorandum states, yes, sir.

Q. So that even if the coal were destined to Chicago, we will say, the D., S. & S. received 30 per cent. of the 5491
total? A. If it provides it in the tariff, yes, sir.

Q. What tariff? Have you the number of the tariff? A. I have not the number of the tariff, no, sir.

Q. Now, the revenue received from the Pennsylvania Railroad on these shipments, via Gum Run, you figured to be a comparatively small proportion of the gross earnings of the D., S. & S., did you not? A. Yes, sir. The majority of the coal was turned over to the Lehigh Valley Railroad.

Q. Well, now, won't you explain again how you fig- 5492
ured the amount due the D., S. & S. on that? A. On the Lehigh Valley Railroad?

Q. On the coal interchanged with the Lehigh Valley? A. That was the actual rate per ton earned by the D., S. & S. on the coal delivered to the Lehigh Valley Railroad at Stockton Junction during the two years ending 1904 and 1905.

Q. That was what? A. That was the proportion of the rates on the coal, that the Lehigh Valley Railroad

5493 paid to the D., S. & S. on the coal that the D., S. & S. delivered to it at Stockton Junction in 1904 and 1905.

Q. Well, a large part of the coal on the D., S. & S. prior to November, 1905, was hauled by it in its own trains, by its own locomotives, to Perth Amboy, wasn't it? A. Yes, sir.

Q. Your figures on Sheet C take no account of this class of traffic? A. No, sir.

Q. You take the D., S. & S.'s proportion of the rates upon coal which was delivered to the Lehigh Valley
5494 Railroad Company for delivery to local points along its line or elsewhere? A. Yes, and I applied the proportion under that tariff which the Lehigh Valley Railroad credited to the D., S. & S. on Perth Amboy proper coal; that is to say, local coal delivered at Perth Amboy, because the coal that was hauled in the D., S. & S. trains over the Lehigh Valley Railroad practically all went to Perth Amboy, but they did not haul any local coal.

Q. They could not haul any local coal? A. They could not haul any local coal, but the service which they performed was identical on this coal up to Stockton Junc-
5495 tion, and I therefore accorded to them the same treatment on this coal going to Perth Amboy for transshipment that I did on Perth Amboy local coal, because the Lehigh Valley performed practically the same service on it.

Q. Now, was that a joint rate? A. Yes, sir.

Q. That was the published tariff right from the mines to Perth Amboy for local delivery? A. Yes, sir.

Q. And you gave the D., S. & S. the same proportion of the whole tonnage moving to any point on the Lehigh
5496 Valley which it received for tonnage moved to Perth Amboy for local delivery prior to 1905? A. No, sir. In the preparation of this data I gave the D., S. & S. the same rate on all coal that went to Perth Amboy, whether for transshipment or not, that we had formerly accorded to them on the coal that went to Perth Amboy, and on the remainder of the coal, of this 9,540,000 tons of coal, I gave them exactly the same proportion as they had formerly been accorded on that coal.

Q. Now, what do the figures indicate under that heading of average rate per ton; are those cents per ton? A. Those are cents per ton, yes, sir. 5497

Q. That is to say, the average amount receivable by the D., S. & S., according to your figures in the year ending June 30th, 1913, upon coal delivered to the Pennsylvania Railroad via Gum Run was 46.8 cents per ton? A. Yes, sir.

Q. And the same year the average rate receivable on coal delivered to the Lehigh Valley at Stockton Junction was 48.7 cents? A. Yes. 5498

Q. Your statement does not show how long the average haul of the D., S. & S. was, does it? A. No, sir, it does not. For this computation?

Q. Yes. A. No, sir, it was not shown.

Q. Have you the figures? A. No, sir, I have not.

Q. Then your statement as to gross earnings of the D., S. & S. is predicated upon the hypothesis that the Lehigh Valley Railroad would have been willing to give the D., S. & S. on all coal shipped to Perth Amboy for reshipment by water the same proportion of the rate from the mines to Perth Amboy f. o. b. which it had previously paid to the D., S. & S. on coal from the mines to Perth Amboy for local delivery? A. Yes, sir. 5499

Q. There was comparatively little, of course, of such coal of the last named class? A. I don't know about that; I did not look it up.

Q. Now, reverting to Sheet 2 on your statement as to cash received, we find $87,653 credited to the D., S. & S. as trackage received from the Pennsylvania Railroad. A. Yes, sir.

Q. The Pennsylvania Railroad had a contract with the Lehigh Valley for trackage from Tombicken to New Boston? A. Yes, New Boston Junction. 5500

Q. For many years prior to the purchase of the D., S. & S.? A. Yes, sir.

Q. This contract provided for a certain payment? A. Yes, sir.

Q. After the purchase of the D., S. & S., as testified the other day by Mr. Gildroy, the Lehigh Valley used a portion of the line of the D., S. & S., that is to say be-

5501 tween Tomhicken or thereabouts and some point in the neighborhood of Hazleton, I think, as a double track for its own line? A. Yes, sir.

Q. And they gave the Pennsylvania the right to use its track under that previous trackage contract, is that it? A. Yes. As I understand it, the Lehigh Valley Railroad desired to double track in order to facilitate the traffic so that——

Q. (Interrupting.) Well, it got the double track from the D., S. & S.? A. Well, it got that part of it. They have
5502 since double tracked the entire line to New Boston Junction, and they utilized that D., S. & S. portion of it because it did not seem a wise thing to go to work and build a third track when they already had a piece that belonged to the D., S. & S. We would have been criticized as not knowing our business, if we had not done that.

Q. But what I am getting at is they gave to the Pennsylvania Railroad the right to use that portion of the track of the D., S. & S. just as though it had been their own track, and they executed a trackage contract be-
5503 tween the two roads? A. I don't know that they ever had any arrangement with the Pennsylvania Railroad about it. The Pennsylvania Railroad trains were allowed to use that track just the same as any other portion of the double track.

Q. And they simply pay to the Lehigh Valley a sum for the use of the entire track from Tomhicken to New Boston Junction? A. Yes, sir.

Q. Now, how do you figure out the proportion of that total payment which is to be attributable to the D., S.
5504 & S.? A. I took the payment received by the Lehigh Valley Railroad for the mileage between New Boston Junction and Tomhicken, the single track mileage. This track of the D., S. & S., the eight miles, I assigned to the D., S. & S. as a proper portion of their revenue—the proportion that the eight miles bore to the entire single track mileage between the two points.

Q. The whole of that line has been double tracked, you say? A. Yes, sir, I think that is all double tracked, but Mr. Gildroy could explain it better, I think. He is——

Q. (Interrupting.) Well, it was not double tracked during the whole of this period, was it? A. I would not be positive of that. This takes effect, you see, from the first of July, 1909. Now, I don't remember if we did put in the double track over the rest of the Lehigh Valley Railroad's line as early as that. 5505

Q. Yes. But what you did, was to take the total mileage of single track as it now exists between Tomhicken and New Boston Junction, and divide that upon the proper proportion which the mileage of the D., S. & S. is to the total mileage of single track? A. Yes, sir. 5506

Q. Then you divided the payments made by the Pennsylvania Railroad during each of these years in the same proportion? A. Yes, sir.

Q. Now, did you figure out the merchandise freight revenue accruing to the Lehigh Valley from the Pennsylvania Railroad, as shown on your statement, in the same way? A. Yes, sir; I proportioned that on the basis of the track miles of the D., S. & S. used to the total track miles over which that freight traveled.

Q. So that the total figures shown in your statement, bottom of Sheet 2, $24,598, bears the same proportion to the total payments made by the Pennsylvania Railroad for trackage for merchandise freight, which the mileage of the D., S. & S. used by the Pennsylvania Railroad bears to the total mileage of single track between Tomhicken and New Boston Junction used by that railroad. A. No, it does not. Conditions are very different on those two classes of traffic. Some of that traffic spoken of in this second item of $24,598 might be traffic waybilled by the Pennsylvania Railroad to Mauch Chunk, which is on the main line of the Lehigh Valley Railroad, and it might be delivered to us at Hazleton and travel down over what is known as our M. & H. division to Penn Haven Junction, and down the main line to Mauch Chunk. Now, of that business or traffic I would assign to the D., S. & S. the ratio that the eight miles of their track bears to the total track that it moved over on the Lehigh Valley Railroad. 5507 5508

Q. Well, if the use of the line between—or rather, for the movement from New Boston Junction to some point

5509 on the M. & H. division, such as Mauch Chunk, the Lehigh Valley would receive no trackage but a pro rate, wouldn't they? A. Get the pro rata of the rate.

Q. I don't see why you have to bring that in here? Why didn't you simply take a proportion of the trackage? A. I just had to do the best I could with what I had. I knew they were entitled to something, and if I did not put it in there I would be criticized. I got the best advice I could under the circumstances. It did not amount to much anyway, and I just put that in there

5510 so that anybody that took that statement could not possibly criticize it on the ground that I had not given the thing a reasonable——

Q. (Interrupting.) Nobody will criticize you for not giving the D., S. & S. enough; no need of being afraid of that. A. Well, I don't believe they can criticize that statement very much in what I have given them anyhow.

Q. Now, your figure which you allow for merchandise freight revenue of the D., S. & S., as I understand it, is simply taken from the previous reports of the D., S. &

5511 S. prior to its purchase. A. Taken from the general books of the D., S. & S.

Q. Yes. That is to say, you have simply taken the revenue on merchandise freight of the D., S. & S. for 28 months prior to November 1st, 1905, and from that fact deduced an average per month and then have assumed that the same average would continue for the seven years and eight months from November 1st, 1905, down to June 30th, 1913. Is that correct? A. That is correct, and that was done because I had no better data

5512 to use.

Q. That brings us down to the figure $5,325,450 for the gross revenue for the D. S. & S. during these seven years and five months? A. Yes, sir.

Q. The next figure in your re-constructed income account is the operating expenses of the D. S. & S., and those are calculated on your Statement A, aren't they? A. Yes, sir.

Q. Now, won't you look at the annual report of the D. S. & S. to the Interstate Commerce Commission for

the year ending June 30th, 1905, and tell us what was 5513
the total amount expended by the Delaware, Susquehanna & Schuylkill during the year ended June 30th, 1905, for maintenance of equipment. A. The total shown in this report is $417,514.57.

Mr. Boles: For one year?
The Witness: For one year.

Q. And what was the amount of transportation expenses in that year? A. $671,914.99.
Q. And what was the amount of general expenses? A. 5514
General expenses, $53,158.40.
Q. What were the total operating expenses of the D. S. & S. for the year ending June 30th, 1905? A. $1,201,410.82.
Q. And in your re-constructed income account you have figured the total operating expenses for the year ending June 30th, 1905, at how much?

Mr. Boles: The question is objected to as the two items have not been shown to be comparable in any way. 5515

The Witness: $171,102.83.
Q. Now, looking at the D. S. & S. report for 1905, tell me what was the gross earnings of the company per mile of road for that year? A. Income per mile of road from operation; is that what you want?
Q. Yes, total gross earnings from operation per mile of road. A. Gross earnings per mile of road from operation, $7,440.69.
Q. Does that indicate a large or small density of traffic? 5516
A. A small density of traffic compared to the Lehigh Valley. It is quite a good density of traffic compared with a western railroad, single track road.
Q. Has the ratio of operating expenses to gross earnings in the last ten years tended to go up or down on the railroads of the United States? A. Tended to go up.
Q. Have you made any allowance in your re-constructed account of the D. S. & S. for the abandonment of a portion of its track? A. No, sir, what my state-

5517 ment shows with regard to the maintenance of way, you mean?

Q. No, I am simply asking you whether you have taken into account the fact that a portion of the track of the D. S. & S. has been partly abandoned since 1905? A. No, sir, I have not taken that into account. I have used the maintenance of the property the same as it was in 1904 and 1905, and if it has been abandoned, of course, it would reduce these figures rather than raise them.

Q. Referring to the first page of your statement, we
5518 find an item covering the cost of capital stock of the four Water companies converted June 30th, 1910, into bonds, since paying interest at 5% on $60,000. Won't you explain what that is in a little greater detail? I did not understand it. A. That was the stock of the Drifton Water Company, the Oneida Water Company, the Beaver Meadow Water Company, and the Tomhicken Water Company mentioned in the first item on this statement.

Q. Yes. A. Which were turned over to the Wyoming Valley Water Supply Company and bonds taken in ex-
5519 change therefor in the amount of $60,000.

Q. Bonds of the Wyoming Valley Water Supply Company? A. Yes, sir.

Q. Who owns the stock of the Wyoming Valley Water Supply Company? A. The entire stock of the Wyoming Valley Water Supply Company is owned by the Lehigh Valley Railroad Company, but it operates as a separate and distinct operation, and has paid not only the interest on its bonds, since that time, but at times it has paid dividends on the stock.

5520 Q. Reverting again to the matter we spoke of yesterday, of the 1,000 new steel coal cars acquired by the Lehigh Valley Railroad Company from the purchase of the Delaware, Susquehanna & Schuylkill, the fact is, if I understand you correctly, that the D. S. & S. at the time of its purchase by the Lehigh Valley had under contract 1,000 new steel coal cars, and that upon these cars the D. S. & S. had paid about—— A. (Interrupting.) $400,000.

Q. Leaving a balance of $699,430 due to the manu- 5521
facturers, is that correct? A. Yes.

Q. In other words, the Lehigh Valley Railroad when it acquired the stock of the Delaware, Susquehanna & Schuylkill, acquired among other things these 1,000 new cars, subject to the lien, so to speak, of the manufacturers for the balance due upon the purchase price, that is to say, $699,000, isn't that correct? A. Yes, sir.

Q. Now, in other words, among the assets of the D., S. & S. which passed to the Lehigh Valley Railroad Company as the purchaser of the entire capital stock, were 5522
1,000 steel cars worth in all $1,099,430, which the Lehigh Valley Railroad Company could get by paying only $699,000? A. Yes.

Q. In other words, that contract was worth to the Lehigh Valley Railroad Company as the owner of the capital stock of the D., S. & S. about $300,000? A. About $400,000.

Q. About $400,000? A. Yes, sir.

Q. Now, in your reconstructed income account, you made no allowance for hire of equipment, have you? A. 5523
Which are you speaking about now?

Q. Of the D., S. & S. A. No, because at that time, the D., S. & S. was receiving these rates from the Pennsylvania Railroad and the Lehigh Valley, and it was the custom for the Lehigh Valley Railroad to turn over to it equipment to load its coal in, and the Pennsylvania Railroad equipment to load its coal in. The D., S. & S. used its equipment merely for hauling coal to tide in their own solid trains, therefore there was no reason why I should make an allowance of that kind. In fact, the books of the D., S. & S. showed a small profit from 5524
hire of equipment, by the fact that occasionally its cars that it used almost exclusively itself, got over on foreign roads and it derived a small revenue therefrom in excess of anything it was compelled to pay at that time.

Q. But the D., S. & S. would not have been able to handle the entire traffic without additional cars, would it? A. Well, if you will refer to the D., S. & S. annual report of 1905, you will find that it had of its own 1,300 cars or something of that kind.

5525 Q. And was buying 1,000 new cars? A. Yes, sir. And consequently, in view of the fact that I only state in here that there were 600 cars actually needed for its business, it seems that the Lehigh Valley Railroad from the result of this purchase got the benefit of about 800 cars that no credit is allowed in this statement for at all. Consequently, if you expect to pursue that, you ought to allow additional revenue in on this statement to the D., S. & S.

5526 Q. This statement shows that shortly after the purchase of the D., S. & S. the entire working assets were turned over to the Lehigh Valley Railroad, weren't they? A. No, sir. Oh, no; I did not say that. My statement shows that the assets were retained apparently by Coxe Brothers & Company.

Mr. Boles: No, he is speaking of the D., S. & S.

5527 The Witness: Oh, pardon me. The D., S. & S. retained their assets, and cashed them in as fast as they could, and they turned the cash over to the Lehigh Valley Railroad about June 30th, 1906, as shown in this statement, "June 27, 1906, received cash."

Q. That is Coxe Brothers? A. Pardon me; right below.

Q. Yes. A. Cash and current assets of the D., S. & S. Railroad turned over to the Lehigh Valley Railroad, $351,740.95.

Q. Yes. So that the entire working assets of the D., S. & S. were turned over about June 30th, 1906, to the Lehigh Valley Railroad? A. Yes, sir.

5528 Q. In your reconstructed income income, what, if anything, have you allowed for interest upon working capital which the D., S. & S., if it had continued business, would have needed? A. I did not include anything for that for the reason that in forwarding that coal collect, the Lehigh Valley Railroad would pay over to the D., S. & S., each month the sum that it was entitled to. In fact, I think that I rather did an injustice to the D., S. & S., because in my Statement B you will note that I credited in the year June 30th, 1907, a net income of $1,073,067.08, and I reduced that by the interest charge-

able of $620,648.37, and I allowed interest on that from 5529
the end of the six months' period; whereas, as a matter of fact, that money was collected for the D., S. & S. each month at the end of each month. For instance, the July revenue would be collected in August; the August revenue in September. But those interest payments were not made until the end of the six months. Consequently, that statement is more than reasonable, and would certainly leave far more than sufficient cash in the hands of the D., S. & S. to carry on any of its business in the interim.

Q. What is the last line in your Statement C in Exhibit No. 74, interest on sum to June 30th, 1913, at 4% compound interest; won't you explain that? A. That is the interest from the average due date to the end of the period. For instance, four per cent. compounded for 6 and ½ years will make 29.05 per cent. on the principal at the end of the time, 29.05 per cent. of the sum which is outstanding at the first average due time. For instance, take the year ending June 30, 1907. I figured that the average due date on that is January 1st, 1907, and that sum 4½ per cent. for these 6 and one-half years 5531
compounded on the $452,418.71 due at that time makes $131,427.64 that the Lehigh Valley Railroad should credit to the D., S. & S. for the use of their money.

Cross-Examination (Continued) by Mr. Gordon:

Q. On Sheet No. 2 you show among the outlay which the Lehigh Valley Railroad Company has made upon Coxe Brothers & Company and on the Delaware, Susquehanna & Schuylkill payments of $6,000,000 for the retirement of bonds? A. Yes. 5532

Q. Beginning with August 1st, 1907, $500,000 half yearly? A. Yes.

Q. In your comparison of cash outlay of the Lehigh Valley Railroad with the assumed earnings of the property which you have compounded at 4% since 1905, did you take into consideration the fact that the Lehigh Valley Railroad Company, if it had not been obliged to make these outlays to retire its bonds would have had the use of these $6,000,000 during the last six years and

5533 that money should have had compound interest also? A. No, I did not take account of that because it would have been entirely improper to do so, for the reason that if you will refer to the first page on that statement you will find that I applied interest on the cost of the property as shown for the first eight months period at 4% on the $17,983,397.52, that it cost us. And the next period I deducted from that the cash which we received from the sale of the current assets of Coxe Brothers and the D., S. & S., reducing the cost to
5534 the company, or the cash outlay at that period to $15,516,209.26, and I thereupon applied the interest for the succeeding four years from July, 1906, to June 30th, 1910, on that principal at 4%, making $2,482,593, on that sum which we were outstanding. I then took the next period from July 1st, 1910, at which time we got the $60,000 from the sale on the Water properties, to June 30th, 1913, on the $15,456,209.26 of cash outlay that we were at during that period, and arrived at the $1,854,745.11, making a total interest charge, as the work went along, chargeable against this transaction, of
5535 $4,816,895.86. That sum is then carried forward on to the next sheet, and is included with the $6,000,000 which we expended, plus the cash expended, and shows the net cash outlay on account of this transaction of $7,273,105.12. The interest on the interest payments that were made is treated on Statement B which I have told you before, where we either deducted from the cash result or from the operation and the dividends which we received and served to reduce that cash for the year ending June 30th, 1907, to $452,418.71. In other
5536 words, at that period we had that latter sum of $452,418.71 in actual cash in our hands in excess of any payments for interest upon which it would be possible to allow 4% or any other sum. Therefore, this 4% which you speak of is taken care of in that sum.

Q. I was not speaking of the interest on that. You misunderstood me. I was speaking of the principal paid to retire the bonds. A. The principal is taken care of in these first items here. That $500,000 that we are paying each year is in payment of the bonds; it is merely

the retirement of the obligations which we have out- 5537
standing, and on which I have allowed interest at this point.

Q. The fact remains, that you did not compound interest on these $500,000 payments from the time you paid them to the present day to reduce your apparent profit from the transaction? A. I have already allowed interest on these payments here in these items.

Q. I am not speaking of interest upon interest payments; I am talking about interest upon the payments for the reduction of the principal at the top of Sheet 2? 5538
A. I understand what you are alluding to. You cannot charge it on both. You can charge it on one, but not on both.

Q. But equitably you did not allow it? A. No, because it would have been grossly improper to charge it? And I allowed that interest for those payments over in the other page where I did not take care of it in the first instance.

Cross-Examination (Continued) by Mr. Machen: 5539

Q. Wont' you look at pages 39 to 41 on the petition, as to which you were asked on direct examination. A. Yes.

Q. On page 40 of the petition we have a statement or what purports to be a statement of the advances made to the Lehigh Valley Coal Company by the Lehigh Valley Railroad on open account, and on the bottom of the page we have what purports to be a statement of the repayments made by the Lehigh Valley Coal Company to the Lehigh Valley Railroad on this same account, 5540
haven't we? A. Yes.

Q. Now, I understood you on direct examination to criticize those tables first, on the ground that no account is taken of the $10,500,000, of bonds issued by the Lehigh Valley Coal Company to the Lehigh Valley Railroad Company in the year 1893 in payment of its indebtedness upon open account? A. I don't think that is proper, to say that I criticized that; I merely answered the question of counsel, and I will properly answer your questions so far as I can.

5541 Q. That $10,500,000 of bonds was issued in payment of advances contracted long prior to 1893, wasn't it? A. I cannot say how long. I merely took the data which I answered to, from the statement which was filed with the Interstate Commerce Commission, and I do not know how long prior.

Q. But those advances which were funded in 1893 by the issue of these $10,500,000 bonds had been accumulating for some time prior to that, hadn't they? A. You will have to show me your statement. My recol-

5542 lection don't serve me on it.

Q. Now, I understood you to take exception to these tables also upon the ground that $5,000,000 of the balance due upon open account was funded in the year 1897 by the issue of $5,000,000 5% coal bonds by the Coal Company? A. Yes, sir.

Q. Now, I am going to ask you whether taking the statement in the petition as a whole, if it does not appear that credit was given for that $5,000,000 upon page 41, the tables on page 40 being simply a statement of the

5543 open account in the form of cash transactions, whereas the funding of $5,000,000 of this balance is duly accounted for on page 41 of the petition? A. The trouble with the petition is that it don't state that there is cash payments. It says, "Of the following sums."

Q. But it goes on to say that the difference between the advances and the payments were treated as follows. A. Yes, sir, it does.

Q. First, over $5,750,000 was charged to the railroad's income or profit and loss account, and that is true, isn't it? A. Yes, it really ought to be $5,743,649.98.

5544 Q. Yes. And then it goes on to say that part of the remainder of the balance was funded in 1897 by the issue of $5,000,000 five per cent gold bonds? A. Yes, sir, it does do that.

By Mr. Gordon:

Q. Mr. Morrison, I understood you to testify yesterday that this statement on page 40 of the petition showing the amounts repaid to the Lehigh Valley Railroad Company by Lehigh Valley Coal Company was inaccurate

because in the year 1905, $2,000,000 of Certificates of In- 5545
debtedness were given by the Lehigh Valley Coal Company to the Lehigh Valley Railroad Company, being part of the $10,537,000 transaction of which we have spoken about? A. Yes.

Q. That you testified to on the basis of a foot note in Government's Exhibit No. 50, which was your answer 21 in I. C. C. Docket 4,914? A. Yes.

Q. Now, to refresh your recollection, I show you the Answer of the Lehigh Valley Coal Company to question 50 in I. C. C. Docket 4,914, and also the extract from the 5546
minutes of the directors of the Lehigh Valley Railroad Company held July 19, 1905, being Government Exhibit No. 18, and ask you if, as a matter of fact, those $2,000,000 of Certificate of Indebtedness to which you referred were not paid to retire an issue of $2,000,000 of "5-10 year coal pledge" bonds of the Lehigh Valley Coal Company given to the Lehigh Valley Railroad Company in 1902 for advances at that time? A. No, sir. My testimony is going to be just exactly as my sworn statement indicated in my reply to the Interstate Commerce Com- 5547
mission in Docket 4,914. I cannot help what the board of directors' minutes show, nor can I help what Mr. Tompkins, the Auditor of the Lehigh Valley Coal Company, with which I have nothing to do, shows. I am bound to conclude that I told a truthful statement when under oath in the preparation of that statement which I have already filed. Now, if you wish me to, I will be glad to look into that and see if I can make any correction to meet you, but I positively would not undertake to do so without making that investigation.

Q. I think you better make that investigation. A. All 5548
right; I will be very glad to do it, but I won't swear to something that is contrary to what I have already sworn to.

Q. Do you recall that there were $2,000,000 of 5-10 year Coal Pledge Bonds issued by the Lehigh Valley Coal Company to the Lehigh Valley Railroad Company about the year 1902? A. I would prefer to look into that. If you will let me have these two questions, I should be glad to look into it, and reply to it. I want to go back

5549 to an answer to a question that I made to you with regard to these $500,000 payments. I want to see if I cannot elucidate that explanation that I gave on this payment of $500,000.

Q. You mean these half yearly payments of $500,000? A. Yes, sir.

Q. Proceed. A. I want to say in that connection that when the Lehigh Valley Railroad makes that payment of $500,000, it consequently reduces the outstanding sum which is contemplated in the $15,456,209.26, so that if
5550 I allow interest on the $500,000, I must reduce this sum over here in the corresponding amount, because I cannot have paid that to the property and also allow interest on the payment which I have made too.

Q. The sum over where, you say "over here." A. On the first page, sir, on the first page of Exhibit No. 74. Take for instance, the item August 1st, 1907, on the second page, we paid $500,000.

Q. Yes. A. If we pay the $500,000 they will have outstanding on that date instead of $17,983,000, shown on the first page, $17,483,000.

5551 Q. Yes. A. Consequently, if I reduce this $17,983,000 down to $17,483,000, and pay 4% on it, the sum extended will be $20,000 less. Then if I allow you the interest of $20,000 over and beyond again, the sum will be just exactly where I started from, which I have already allowed for.

Mr. Boles: In other words, as fast as the principal was reduced, you reduced the interest?

The Witness: No, sir; I allowed the interest, Mr. Boles, on the original sums from start to finish,
5552 and I took the interest that we paid from the amounts which I derived from the operation of the D., S. & S. and the dividends from Coxe Brothers, and accorded to this property the 4% on the net sum which was in the hands of the railroad at the end of the performance.

Q. And these items of the net cash are made to June 30th, 1913, on page 1, which are made up of interest pay-

ments—— A. (Interrupting.) They are not made up 5553
of interest payments, sir; those are the items of principal.

Q. Now, I mean the last three items on the page, next to the last three? A. Yes, sir, on the first page.

Q. Yes. Are those the interest payments actually paid, or interest payments, which under your figures would have been paid? A. Interest that would have been paid.

Q. If that principal had been outstanding? A. Yes, sir. 5554

By Mr. Machen:

Q. Look at your Exhibit No. 69, and refer to the Seneca Coal Company transaction. It appears from this exhibit, does it not, that the stock of the Seneca Coal Company was bought in by the Lehigh Valley Railroad Company in the year 1901 at a cost of $1,000,000? A. Yes, sir.

Q. It also appears that within the same year, that is in November, 1901, the Lehigh Valley Railroad Company wrote down through profit and loss, the book value 5555
of the stock of the Seneca Coal Company thus purchased by the amount of $200,000? A. Yes, sir.

Q. That writing down, therefore, following almost immediately after the purchase could not have been due to the exhaustion of the mines from the mining of coal since the purchase and prior to the writing down, could it? A. The books do not show why it was written down.

Q. But it was written down almost immediately after the purchase? A. It was written down in November, 5556
1901, and the property was bought in 1901, and November 30 was the end of the fiscal year.

Q. Yes. A. As I explained in a previous answer.

Q. The time of the year when the most of the writings down or writings up, as the case may be, took place? A. There were not any writings up, I don't think.

Q. Well, when most of the writings down, then, took place? A. Yes, sir.

Q. It also appears, doesn't it, from this exhibit that the only other writing down of the stock of the Seneca

Coal Company was in the year ending June 30th, 1904? A. Yes, sir.

Q. In that year the book value of this stock of the Seneca Coal Company was written down by the Lehigh Valley Railroad Company by an amount of $27,348.98, isn't that so? A. Well, now, that is not exactly so. At that time we received from the operation of the mines a ten-cent royalty or $27,348.98, being what appears to have resulted on an application of this ten cents per ton on the coal shipped for the year ending June 30th, 1904.

5558 The company therefore paid into the treasury of the Lehigh Valley Railroad Company $27,348.98, and the management at that time, for reasons best known to themselves, thought it wise to credit that to the value of the property on the books, rather than to throw it into the income account of the Lehigh Valley Railroad.

Q. That represented the amount of estimated depreciation of the mines through the mining of the coal? A. I don't know.

Q. You speak of it as a royalty. You don't mean royalty in the sense of rental? A. I don't know. That

5559 is what it says, 10 cents per ton. Did I say royalty?

Q. Yes. A. Pardon me, that word "royalty" should be cut out. It just says "ten cents per ton on coal shipped." I don't know whether it is royalty or not.

Q. All that your books show is that in 1904 they wrote down the value of the stock by $27,348.98, and that the amount of that writing down was arrived at by taking ten cents per ton on coal shipped from the mines of the Seneca Coal Company, during the year ending June 30th, 1904? A. I don't so understand at all.

5560 I understand as I have plainly stated to you, sir, that the Seneca Coal Company paid in cash to the Lehigh Valley Railroad $27,348.98, being ten cents per ton on the coal shipped for the year ending June 30th, 1904.

Q. Yes. A. And we credited it to the cost of the property account on our books.

Q. Yes. A. We did not credit it to any profit account.

Q. Yes. That is all.

Re-Direct Examination by Mr. Boles: 5561

Q. $27,348.00 would represent how many tons of coal on the basis of ten cents per ton? A. 273,480 tons of coal.

Q. I show you the annual report of the D., S. & S. Railroad Company for the year ending June 30th, 1905, and ask you to state the number of miles shown on the sub-division 1 on page 9, of full gauge? A. 28.66 miles.

Q. And the miles of branches under sub-division 2, as provided for in the classification of Interstate Commerce Commission? A. 17.60 miles. 5562

Q. Making a total of how much? A. 46.26 miles.

Mr. Boles: I offer in evidence The Railway Library of Statistics, for the year 1912 compiled and edited by Slason Thompson, director of the Bureau of Railway News and Statistics, Chicago, and I will ask the witness to read a small portion from that book, with the privilege upon the part of the Government to read any other portions they may desire.

Mr. Machen: I object to the admissibility of 5563 this volume of statistics taken from hearsay and otherwise, as inadmissible.

Q. Mr. Morrison, I ask you to read from page 400, the paragraph I have marked. A. (Reading.)

"Net Capitalization in 1912.

"Following the formula adopted by Prof. Henry "C. Adams when Official Statistician for the Com- "mission to ascertain the only capitalization that " 'measures the claim of railway securities on rail- 5564 "way revenues,' the returns to this Bureau from "236,444 miles of operated line (196,831 owned and "39,613 leased) yield the following result for the "year ending June 30, 1912."

Q. Now, from the table which reads summary showing capitalization of 386 companies.

5565 Summary Showing Capitalization of 386 Companies Operating 236,444 Miles of Line for the Year Ending June 30, 1912.

Item	Capitalization (196,831 Miles Owned) 1912.	Capitalization (236,444 Miles Operated).
Capital Stock	$7,016,703,076	
Funded Debt	9,588,164,232	
Receivers' Certificate	28,835,913	$16,633,703,221
5566 Rental 39,613 miles, $130,023,906 at 5%		2,600,478,140
Total		$19,234,181,361
Less—		
Deductions for Railway Stock Owned	$3,136,345,433	
Deduction for Funded Debt 5567 Owned	1,901,097,051	5,037,442,484
Net Capitalization 1912 (236,444 Miles)		$14,196,738,877
Net Capitalization per Mile Operated		60,043

Q. Now, therefore, what is the net capitalization per mile operated of the 236,444 miles of railroad in the United States upon which the computation was made?

5568 A. The net capitalization per mile operated, $60,043.

Q. Now, will you read the portion on 401 which I have marked.

Mr. Machen: Same objection.

A. (Reading.) "Besides the railway stocks and bonds "reported as owned by the companies included in this "statement on June 30, 1912, they owned $678,060,706 "stocks and $198,878,377 bonds other than railway is-"sues and $154,312,034.00 miscellaneous securities. The

"income from these $1,027,251,117 securities, amounting 5569
"to over $35,000,000 relieved railway revenues of just
"so much of their capital charge.

"NET CAPITALIZATION OF ALL RAILWAYS, 1912.

"Accepting $14,196,738,877 as the net capitalization
"of the 236,444 miles of line reporting to this Bureau
"it only remains to place a reasonable estimate on the
"12,444 miles not covered by such reports, in order to
"arrive at a close approximation of the net capitalization
"of all the railways in the United States. Estimating 5570
"this as high as $40,000, where $30,000 would be liberal
"the account would stand:

"SUMMARY SHOWING NET CAPITALIZATION OF ALL THE RAILWAYS IN THE UNITED STATES ON JUNE 30, 1912.

Net Capitalization 236,444 Miles shown *supra*	$14,196,738,877
12,444 Miles not Represented at $40,000.00 per Mile	497,760,000
Total for 248,888 Miles of Operated Line	$14,694,498,877
Less Assigned to Other Properties in 1910	36,953,808
Net Capitalization of All Railways in United States in 1912	$14,657,545,069
Net Capitalization per Mile of Line	61,508
Net Capitalization per Mile of Track	41,204"

5571

5572

Q. Applying the average net capitalization per mile operated as computed from the statistics which you have just referred to, will you tell us what the capitalization of the D. S. & S. Railroad would be on the basis of the mileage you have mentioned?

Mr. Machen: Objected to as irrelevant.

The Witness: $1,720,832.38, when applying to the broad gauge main line of the D. S. & S. Railroad.

5573 Q. That is, you have multiplied the 28.66 miles of broad gauge main line by the figure for net capitalization per mile operated which you have obtained from the statistics of Mr. Thompson, which figure was $60,043.00? A. Yes.

Q. Now, will you refer to Mr. Slason Thompson's figure for net capitalization per mile of track, and what is the amount stated in his report. A. $41,204.

Q. Now, will you multiply that by the total number of miles of broad gauge tracks of the D. S. & S. Railroad
5574 which you have stated was 46.26 miles? A. That makes the value of the railroad $1,906,097.04.

Q. What was the capitalization of the D. S. & S. Railroad at the time the stock was taken over by the Lehigh Valley Railroad? A. $1,500,000.

Q. Any bonds? A. No.

Q. That amount represents capital stock? A. Yes.

Q. And at what amount was the property placed on the books of the Lehigh Valley Railroad Company representing the cost thereof? A. $1,500,000.

Q. Between what amounts has the per diem rate for
5575 the use of coal cars by connecting railroads varied since 1905? A. It has gone from 25 cents per day per car to 50 cents per day per car.

Q. What is the rate at the present time? A. 45 cents per day.

Q That is the amount which one railroad pays another each day that the car of the lending company is on the tracks of the borrowing company? A. Yes.

Q. Reference has been made in your cross-examination to the fact that the report of the D. S. & S. Railroad
5576 Company shows a high percentage of relation between operating income and operating expenses, and to the fact that your computations as contained in Exhibit No. 74 show a low percentage for the same relation. How do you explain the difference? A. That is to be explained in two ways; I mean, there are two reasons for it. One reason is that Coxe Brothers owned the D. S. & S. Railroad, or five or six members of the family owned the entire property. It had a contract with the Lehigh Valley Railroad by which to reach tide with coal belonging

to Coxe Brothers, and Coxe Brothers utilized the D. S. 5577
& S. and the contract which through the D. S. & S. was had with the Lehigh Valley Railroad to haul their coal to tide at a very low rate, and that rate Coxe Brothers fixed apparently with the purpose of allowing the D. S. & S. to make a six per cent. dividend in its operation through the use of this trackage arrangement, which they had with the Lehigh Valley Railroad. So that if reference is made to the annual report, it will be found that the earnings per ton, one-half of which went to tide from the coal regions, and travelled probably 140 miles, per- 5578
haps 150 miles, I don't know about that, but any way the average rate that the D. S. & S. earned on the total tonnage handled, according to its own annual report, page 61, was 69.145 cents a ton. The trackage that they paid to the Lehigh Valley Railroad was $304,631.05, as shown on the D., S. & S.'s own annual report in their operating expenses, and that sum was about 36 cents a ton. So that of the total tonnage which they handled that year, as shown on page 63 of the annual report of Coxe Brothers & Company for 1904, was 1,692,626 tons, 846,- 5579
452, perhaps, have gone to tide in the Coxe Brothers trains, for the sum which is a paid trackage to the Lehigh Valley Railroad. This is approximately so. That is about one-half of their tonnage. The other half, I presume, was turned over to the connections in the coal region. Now, the average cost of hauling the coal by the D., S. & S. was a little less than 62 cents a ton.

Mr. Machen: Hauling the coal from where to where?

The Witness: Now, I don't know; there it is, 5580
it is in that report. (Indicating.) In other words, if we take the total operating expenses of the D. S. & S. for the year 1904 as recorded in their report to the commission, you will find there are $1,043,225.00, and if you divide that by the total anthracite tonnage which they handled, taking no account whatever of the handling of the little merchandise and other things, you will find that the average rate was 61.6 cent per ton cost.

5581 By Mr. Boles:

Q. The average cost? A. Yes, the average cost. The average earnings for all freight handled was 69.145 cents per ton. See page 61 for all freight. The total operating expenses as stated above, was $1,043,225.00, and the average cost for handling was 61.6 cents. Taking from this 18 cents per ton, because one-half of the tons went over the Lehigh Valley Railroad, and paid 36 cents a ton on that, half of that sum is in the operating expenses, leaves you 43 cents per ton for the handling of the coal.

5582 If you take the 10¾ cents from that that leaves you about 32 cents.

Q. Ten and three-quarters cents you refer to is—— A. (Interrupting.) Is what I estimated was the cost of getting the coal to the assembling point where the trains were made up.

Q. That is the 10.75 shown under the year 1905, in your statement A, accompanying Exhibit No. 74? A. Yes, sir. That leaves 32 cents a ton to take the coal from Lumber Yard 133 miles to Perth Amboy. Therefore, in consider-

5583 ing this question you will find that the reason for the high percentage of operating expenses is because the rate is 69.7, which is an exceedingly low rate when you apply it to hauling coal any such average distances as this appears to have been, some 82.55 miles, which will be noticed from obtaining the average haul for each ton of freight as shown on page 63-A of the Interstate Commerce Commission report; especially, when you consider that it includes 36 cents of a rental of track.

Mr. Machen: No, it does not include that.

5584 The Witness: Oh, pardon me, sir, it does include it.

Mr. Machen: Because you don't find in the annual report of the Lehigh Valley Railroad——

The Witness: (Interrupting.) There is an item there, $304,631.05, on page 45 of the Report for June 30, 1904.

By Mr. Boles:

Q. In working out the percentage relation as shown in the annual reports of the D. S. & S. Railroad to the

Interstate Commerce Commission the figures include the 5585
rental paid to the Lehigh Valley Railroad, do they not? A. Yes, sir.

Q. Now, they also include under Maintenance of Equipment an item of $274,850, made up—— A. (Interrupting.) That is made up of some charges during that year for putting equipment in shape and creating a reserve so that, if you refer to the page 43 Interstate Commerce Commission's Report of the D. S. & S. for the year 1904, in which there was apparent criticism of my system of costs in comparing the Statement A, 5586
Maintenance of Equipment with the apparently large expense to the D. S. & S. during that period, it is only fair to take out the cost item which is a credit to reserve and a matter more or less of depreciation on the equipment of former years, or it will be noted by referring to that statement that the repairs and renewals of locomotives, that is for the D. S. & S., was $24,491. In my statement of the cost I allowed repairs for that year of $15,225, notwithstanding the fact that repairs which I allowed for, was for but six locomotives, when 5587
the record of the D. S. & S. from their report to the Commission on page 65, it will be found to be 23 locomotives.

Q. In actual service? A. In actual service. Consequently it cannot but be admitted that the $15,000 which I have allotted as the cost of repairing those 6 locomotives, would appear to be ample.

Q. For repairing 6 locomotives? A. Yes, would probably be ample, when it only costs $24,000 to keep 23 in repair.

Q. Referring to the item of Repairs and Renewals of Freight Cars, what amount was expended by the D., S. 5588
& S. under that heading for the year ending June 30th, 1903? A. $46,695.71.

Q. Against the item of $274,000 in 1904? A. Yes, sir. And if you refer to my evidence in connection——

Mr. Machen: (Interrupting) 1903 was that?

Mr. Boles: 1903 was the first, and the other was 1904.

Mr. Machen: How about 1905?

5589 The Witness: If you will refer to my evidence in connection with Statement A, I stated that the reason I did not use the average sum shown by the D., S. & S. of $180.00 per car per annum, was because I considered it a most exorbitant amount. I used $70.05 per car yearly.

Q. In the report of Operating Expenses to the Interstate Commerce Commission for the year ending June 30th, 1905, it shows what amount of repairs and renew-
5590 als to freight cars? A. $385,023.47.

Q. Is that normal or abnormal? A. Abnormal. It is abnormal, because if you will refer to page 29 of the same Report you will find in the cost of road and equipment a deduction of $600,000 from the cost of the property, being the creation of this reserve of $600,000, by charging operating expenses with this tremendous sum in the last year or two which the D., S. & S. operated.

Q. In other words, they were buying their new cars out of their revenue? A. They were buying them by charging operating expenses.

5591 Q. Yes, charging operating expenses. A. Swelling their operating expenses.

Q. That is clearly shown from these annual reports, is it not? A. Yes, sir.

Q. If you consider these facts in connection with the things you have mentioned, particularly the fact that the operating expenses included the cost of hauling the coal under the trackage contract, is there any difference between the percentage relation shown by the D., S. & S. report and the percentage relation shown in your
5592 Exhibit 74? A. No, sir, there is not.

Q. I show you Statement C attached to Exhibit 74, and I ask you whether the divisions afforded the D., S. & S. Railroad by connecting lines as shown thereon are indicative of a high rate of division afforded the D., S. & S. or otherwise? A. It does indicate a high division. The D., S. & S. was a plant proposition. It was owned entirely by the people that mined the coal, and it obtained very favorable rates for the service which it was performing at that time, just the same as all of

these plant railroads did, such as the United States 5593
Steel Company and others.

Q. Do you consider that a return of 33 per cent. on the capital stock was unusual under those circumstances? A. No, I should not think so.

Q. Particularly in view of the handsome divisions which your records show were accorded the D., S. & S. on this joint traffic? A. Yes. I will say this, further, that if Coxe Brothers had paid the ruling rate of freight to the D., S. & S. for the service which it performed, these revenues would not have been very far from what 5594
is shown in here, but the fact of the matter was that Coxe Brothers owned it and made use of the D., S. & S. merely to get their coal to tide, and as I observed Coxe Brothers owning the D., S. & S., Coxe Brothers did not care which pocket it came out of, whether from the D., S. & S. or their own.

Q. It all went into their pocket just the same? A. Yes.

Q. Then in addition to these unusual charges you have mentioned, the items of maintenance of equipment, and 5595
the items of transportation, and the item of general expense, as shown in the D., S. & S. report to the Interstate Commerce Commission, all include the cost to the D., S. & S. of hauling the coal to Perth Amboy under the trackage contract? A. Oh, yes.

Q. That haul was how long? A. From the mines to Perth Amboy.

Q. Yes. A. It was——

Q. (Interrupting.) How did it average from the mines to Perth Amboy? A. I cannot state exactly because I don't know just how far the average distance was from 5596
the D., S. & S. Mines to Lumber Yard. It is 133 miles——

Q. (Interrupting.) Well, what is the longest branch shown? A. Something over about 9 and ¾ miles is the longest branch.

Q. What does the shortest branch show? A. It is something about ¼ of a mile.

Q. And what is the length of the main line? A. 28.66 is the broad gauge line.

Q. And the length of the narrow gauge main line is? A. 1.97 mile.

5597 Q. What was the distance from the connection with the Lehigh Valley to Perth Amboy? A. 124.18 miles. Well, assuming that it was 10 or 12 miles, average to Stockton Junction, it would be in the neighborhood of 135 to 140 miles total average distance from mines to Perth Amboy.

Q. What did the D. S. & S. Railroad do with the cars after it got them to Perth Amboy? A. Turned them over to the Lehigh Valley Railroad and they sorted them out and hauled them up on the dump, and charged them,
5598 it seems to me, some twelve cents a ton for that service.

Q. That also was included in the operating expenses to the D. S. & S.? A. I assume it is.

Q. Can you tell from the annual report? A. I could not find it, but it seemed it was some twelve cents a ton, and it ran about $100,000, which was paid to the Lehigh Valley for the special service which we afforded them down at Perth Amboy in pushing the coal up on to our trestle.

Q. Would it normally be a part of the railroad operating expenses? A. Yes.

5599 Q. Under the ruling of the Commission would it be classified as an operating expense? A. It is in the operating expenses on the Lehigh Valley Railroad because we carry the coal from the breaker to the end of the chute where it goes into the vessel, and it is in one movement.

Q. You were asked in reference to Exhibit 73 various questions about in what manner you included the cost of acquiring subsidiary companies, and you were particularly asked certain hypothetical questions about securing companies that had their property sold under
5600 foreclosures of mortgage. Do you know of any companies included in your property investment item, Exhibit 73, which the Lehigh Valley Railroad have acquired the property of upon a sale under a mortgage? A. No, sir.

Q. Isn't it a fact that the Lehigh Valley Railroad Company advanced the money for the construction of every one of its subsidiary lines in the State of New Jersey? A. Yes.

Q. Isn't it a fact that the Lehigh Valley Railroad Company advanced the money for the construction of every

part of the Lehigh Valley Rail Way Company, the New 5601
York corporation? A. No, sir, that is not quite the fact. There are a few little parts of the Lehigh Valley Rail Way, away back in the seventies, which, I think, at a cost of a few hundred thousand dollars, were acquired by purchase of the stock.

Q. In the open market? A. Yes.

Q. Not under any foreclosure sale? A. I don't know that.

Q. You never heard of any such? A. Well, I just don't remember at this present time. If there was anything 5602
of the kind it was very inconsequential.

Q. Were any of the subsidiary lines which are under lease to or which were merged into the Lehigh Valley Railroad Company located in the State of Pennsylvania acquired under foreclosure sales? A. No, I don't think there were. I don't know of any.

Q. Now, in reference to that same exhibit, I understand that some of these accounts, for the purpose of making up this exhibit, you have re-classified. That is, you have classified differently than the classifications provided for by the Interstate Commission in its annual 5603
report. A. Yes, sir.

Q. Does that affect the net result? A. No.

Q. Each item of expense, or each item of revenue appears in here under one of these headings or another, so that the net result is not affected in any way? A. Yes, that is correct.

Q. And the net result agrees absolutely with the reports to the Interstate Commerce Commission? A. Yes, except in the former years, where certain charges were made to operating expenses for construction, and things 5604
of that kind, which we were compelled to eliminate, but an exact analysis was made, and that has been balanced up with the Interstate Commerce Commission's report.

Q. So that the ratio of comparison on property investment as you have computed it on Exhibit 73, is the exact figure which the same computation would give if you worked it out from the reports of the Interstate Commerce Commission? A. No, sir, it would not work out with the reports of the Interstate Commerce Commis-

5605 sion, without explanations to show the adjustments in the account, because——

Q. (Interrupting.) Such as what? A. Well, taxes. For instance, there are taxes shown as coming out of a certain year's expenses, and portions of these taxes were charged to profit and loss because they applied to a period several years before the one in which they were paid.

Q. Then it is reflected in one year or another? A. Yes, either the profit and loss account or the income account.

5606 Q. Referring to the average rates per ton per mile shown on all other freight in Exhibit No. 73, how does the haulage of all other freight compare with the length of haul on anthracite? A. It is longer. We have a longer haul on other freight than we have on anthracite coal.

Q. Does the length of haul as it increases tend to decrease the rate per ton per mile? A. Yes, sir.

Q. The petition of the Government in this case charges on page 41, that the railroad company wrote off either to income account or profit and loss account over $5,750,-

5607 000, which, I believe, the Government admits should be $5,743,000, and then says that no re-payment was required or accepted. Is that so?

Mr. Machen: I object unless the witness is proved to be qualified.

The Witness: There is nothing in our records to indicate the correctness of these statements.

Mr. Machen: Or incorrectness?

Mr. Boles: You admit they may be incorrect?

Mr. Machen: He said there was nothing in the

5608 record to indicate the correctness of the statements, and I say there is nothing in the record indicating the incorrectness of the statement either is there?

The Witness: I don't know of anything.

Mr. Machen: I say your records are silent on the subject.

The Witness: Yes, sir.

Q. If you had an investment in the stock of an out- 5609
side company, and all the property represented by the investment was destroyed by fire, putting to you a hypothetical case, what would you do in the way of changing the figures at which you carried the investment on your books, or would you change it at all? I will cite this case: If the railroad company owned the stock of an elevator company, and all the elevator company owned was an elevator for transhipping grain, and the elevator were destroyed by fire, and there was no insurance, so that it was a dead loss, how would you change 5610
the books of the company in respect to that investment? A. I would write it off to profit and loss.

Q. And if, stating, if you please, a hypothetical case, you owned the stock of a coal company, actively engaged in mining coal, and after you had held it five years you found that all the coal in the lands which it owned had been mined out and exhausted, would you change the value of the stock as carried on your books? A. Yes, sir. I would charge it off if there was nothing there. In fact, we charge off property to profit and loss besides coal property. The old Mansion house at Mauch Chunk 5611
was charged off to profit and loss, and stood at a dollar, and some years afterwards we sold the stock for several thousand dollars, and credited it up to income account, and the Government made us pay one per cent. on the income, too. The Glen Summit Hotel and Land property, we wrote down to $25,000, and then sold it for more, and the Government made us pay for the profit we made on it.

Q. Are you actually writing down from year to year the value at which you carry the stock of Coxe Brothers 5612
& Company? A. Yes.

Q. For what reason? A. The reason we write that down is——

Mr. Machen: (Interrupting.) You mean the reason you write it down, or is it done by you without the authority of any one else, or is it done by the authority of the Board of Directors?

The Witness: I would not be sure about that, but I think it is done by the authority of the

5613 President. I don't know whether the Board of Directors—I am not very strong on those minutes of the Directors, you know. I have refused to mix up with those.

Q. At least the President has sanctioned your action in writing it down from year to year? A. Yes, sir.

Q. Will you state your reason for writing it down? A. The Lehigh Valley Railroad paid the bonds off each year at the rate of a million dollars a year, and wrote
5614 off the bonds, charged the cash against the bonds outstanding, and reduced the bonded indebtedness, and made an entry at the end of the year charging profit and loss the million dollars on account of the bonds we paid.

Mr. Boles: I offer in evidence the regulations prescribed by the Interstate Commerce Commission in reference to the classification of income profit and loss and general balance sheet accounts for steam roads, and I will ask the witness to read in such portions as I desire to have in the
5615 record with the privilege on the part of the Government to read in any other portions they desire.

Mr. Machen: Effective as of what date?

Mr. Boles: The regulations I have before me are marked "Issue of 1914, effective on July 1, 1914." Is there any objection?

Mr. Machen: No, sir.

Q. Are you familiar with this document? A. Yes, reasonably familiar with it.

5616 Q. How long has the Interstate Commerce Commission had regulations for the classification of income and profit and loss and general balance sheet accounts for steam roads? A. I don't remember the exact date, but it is several years.

Q. This is the last issue? A. That is the one that takes effect the beginning of this present fiscal year.

Q. That is the last issue? A. Yes.

Q. The one under which you are now working? A. Yes, sir.

Q. I will ask the witness to read into the record paragraph 5 on page 41, under the heading of Special Instructions, and Rule 780 under "Accounts" on page 56. 5617

"5. Book Value of Securities Owned:—The accounting company is allowed the option of carrying its investments in securities other than those issued or assumed by it either at cost or at a reasonable valuation other than cost. In recognition of this option the term ledger value is used in the text of the accounts representing securities owned."

5618

"780. FUNDED DEBT RETIRED THROUGH INCOME AND SURPLUS. This account shall include the total amount of appropriated income and surplus expended in the discharge of the principal (less the discount, if any, suffered at the time of sale) of any funded debt issued or assumed by the accounting company and retired through sinking or other funds provided from income or surplus. The account shall be kept in such form as to show separately amounts expended to June 30, 1907, and amounts expended since that date.

5619

"NOTE A: Temporary appropriations of current funds for the payment of obligations which are intended to be replaced by new issues shall not be included in this account.

"NOTE B: Amounts of appropriated income and surplus expended in retirement of trust obligations issued for the purchase of equipment shall be included in account No. 779, 'Additions to property through income and surplus.'"

5620

Q. Under Account 780, the Commission authorizes you, does it not, to take any amount of the income which you receive on a funded debt which at the time you own, say an issue of bonds of a subsidiary company, and use it, if you choose, to write down the book value of those securities in your hands?

Mr. Machen: Objected to because the instructions of the Commission are the best evidence of what the Commission authorizes.

5621 Mr. Boles: They are in evidence.

Mr. Machen: I know they are. That is sufficient.

Q. Is that true? A. Yes.

Q. How do you construe, as general auditor of the Lehigh Valley Railroad Company, the words "reasonable valuation" as they appear in Rule 5 on page 41?

Mr. Machen: Same objection.

5622 A. Reasonable valuation in my opinion would be such reasonable valuation as the executive officers of the company should determine, subject to criticism by the Commission.

Q. Under which you could either write up the investment or write down the investment? A. Yes, sir.

Q. As the conditions might warrant? A. Yes, sir.

Q. Have you been allowed by the Treasury Department of the United States Government in the making up of your income tax returns to take credit for the depreciation of the Coxe Brothers' stock on your books?

5623 Mr. Machen: Objected to as irrelevant.

A. No, not on our books; in the income return which we made to the United States Government.

Q. You have been allowed to take credit in the income return? A. Yes, sir.

Q. Have you actually discussed that subject with the Commissioner of Internal Revenue? A. I don't know what the gentleman's title was. He was at Washington in the Treasury Department, and he is the head of the

5624 department in charge of that work.

Q. That was at a conference which you and I had with Mr. Cabell? A. Yes, sir.

Q. Have you reported from year to year to the Interstate Commerce Commission the writing down of the stock of Coxe Brothers & Company? A. Yes, sir.

Q. Has any question ever been raised about it? A. Never.

Q. That has been ever since 1905 or 1906? A. Yes, sir.

Q. Exhibit No. 74 states in reference to the $2,113,- 5625
447.41, that it represented cash received from what? A. From Coxe Brothers & Company, Incorporated.

Q. Go ahead. A. On June 27, 1906. Being proceeds of current assets of that company at date of purchase converted into cash and turned over to Lehigh Valley Railroad.

Q. There is nothing on the face of that to show that that was working capital of Coxe Brothers & Company, is there? A. No, sir.

Q. Was it working capital of Coxe Brothers & Com- 5626
pany? A. It was really and almost entirely the outstanding bills which Coxe Brothers & Company had against those to whom they had sold coal, collected before on June 1st, 1906, and which in the conduct of its business, Coxe Brothers & Company, Incorporated, turned it over some eight months later to the Lehigh Valley Railroad after collecting it.

Q. Having a fair working capital, or assuming that they had at the time a fair working capital, all these amounts were amounts which Coxe Brothers & Company would have been justified in declaring as a dividend on 5627
the stock? A. Certainly.

Mr. Boles: That is all.

Re-Cross-Examination by Mr. Machen:

Q. When was the Delaware, Susquehanna & Schuylkill Railroad Company incorporated? A. Incorporated April 14, 1890, Articles filed April 17, 1890.

Q. Your attention was called to the fact that the reports of the Delaware, Susquehanna & Schuylkill Rail- 5628
road Company to the Interstate Commerce Commission prior to 1905 included in the operating expenses of the company the trackage payment made to the Lehigh Valley Railroad for the use of the tracks for transportation of anthracite coal between Lumber Yard Junction and Perth Amboy? A. Yes, sir.

Q. Isn't it also a fact that the gross operating earnings of the D. S. & S. Railroad as shown in these same reports include the total receipts upon such freight for

5629 the transportation from the mines to Perth Amboy? A. Yes, sir. Of course, it is understood in stating that that Coxe Brothers fixed the price which they were going to pay on the coal which they were having transported to tide.

Mr. Boles: It might have been a cent or a dollar or five dollars?

The Witness: It might have been made so that operating expenses were one hundred and fifty per cent of revenue just as easy as eighy per cent.

5630

Q. There was some other coal than Coxe Brothers' coal that was transported to Perth Amboy by the D. S. & S. Railroad, wasn't there? I don't know, sir. I am not sure there was not. The amount of the Coxe Brothers' mines was in excess of the amount that was transported to tide.

Q. Your attention was also called to certain expenditures for repairs and renewals of freight cars by the D. S. & S. Railroad in the reports to the I. C. C. for 1904 and 1905, which were considerably in excess of the ex-
5631 penditures for the same purpose as indicated in the reports for 1903 and 1902? A. Yes.

Q. Now, do the reports to the I. C. C., which you used in connection with your testimony, contain anything to indicate whether or not the freight cars of Coxe Brothers & Company had been allowed to run down prior to 1904, so that it was necessary for them in 1904 and 1905 to make extraordinary expenditures in order to bring up the equipment to the standard at which it should have been maintained in past years? A. No, in the re-
5632 ports there is not, but in the general books of the D. S. & S. there is. That expenditure was not made on the cars in those years. There were book entries made, and the operating expenses were inflated by the amount of these book entries in order to create a reserve to purchase new equipment to take the place of the equipment which had been bought years before, and had not been repaired, and the money never was expended on the equipment in the years shown in those reports.

Q. It was kept as a reserve fund? A. It was credited 5633
up to a reserve fund and the operating expenses increased thereby, just by a journal entry, there wasn't any money or labor expended.

Mr. Boles: It was what?

The Witness: It was nothing but a book entry, bookkeeper's entry and the report which I quoted from to-day shows you in the succeeding year where the amount appears in reduction of the property account of the D. S. & S. in the succeeding reports to the Commission, to the extent 5634
of $600,000.

Q. In your Exhibit No. 73, at what figure do you include the railroad and equipment of the Delaware, Susquehanna & Schuylkill in the various items going to make up the entry for property investment which is the basis of your statement? A. I included that at the cost that it appeared on the D. S. & S. books of the property which they showed.

Mr. Boles: Do you remember the amount? 5635

The Witness: Some two million one hundred thirty-three thousand, I think was the book amount of the D. S. & S.

Mr. Boles: That was actually expended money?

The Witness: Yes.

Q. Are you aware of any railroad in the country with gross earnings of less than $10,000 a mile, with a mileage of more than 45 miles, which shows an operating ratio so low as 20 per cent.? A. I never worked, nor am I 5636
familiar in detail, with these plant railroads which make those exorbitant dividends.

Q. Well, are you aware of any railroad, plant railroad or otherwise, which had an operating ratio of 20 per cent., with gross earnings of not more than $10,000 a mile, and a mileage of more than 45 miles? A. I am not familiar with railroads of that size at all. I don't know anything about the ratio or the relative revenues of any such railroad in the United States.

5637 Re-Re-Direct Examination by Mr. Boles:

Q. The petition in this case states at page 42, that on November 21, 1902, the Lehigh Valley Coal Company issued $2,000,000 of so-called 5-10 year 5% gold bonds; that those bonds were all purchased by the Lehigh Valley Railroad and retained by it until June 30th, 1905, when they were surrendered to the Lehigh Valley Coal Company in exchange for Certificates of Indebtedness, is that true? A. No.

Q. What are the facts in reference to the transaction?

5638 A. The facts are that in 1902, the Coal Company issued to the Girard Trust Company 5-10 year Coal Pledge Bonds, and in 1905, the railroad company advanced to the coal company $2,050,000 in cash to retire those bonds and received in reimbursement from the Lehigh Valley Coal Company its Certificate of Indebtedness.

Q. At the same time? A. At the same time.

Mr. Boles: That is all.

Mr. Machen: That is all.

(Witness Excused.)

5639

Thereupon a recess was taken until 2.30 P. M.

After Recess.

Andrew Ross, a witness called on behalf of the Lehigh Valley Railroad Company, being first duly sworn, testified as follows:

5640 Direct Examination by Mr. Boles:

Q. Mr. Ross, what is your position? A. Division Superintendent.

Q. Of what railroad? A. The Lehigh Valley Railroad, Easton, Pennsylvania.

Q. In charge of what division? A. Lehigh and New Jersey Division.

Q. The Lehigh and New Jersey Division runs from where to where? A. From Penn Haven Junction to Perth Amboy and to Park View, near Newark, including the Pottsville branch.

Q. The Pottsville branch is a branch that goes to the 5641
Blackwood colliery and connects with the main line? A. It is.

Q. Connecting with the main line at Lizard Creek Junction? A. Yes; now called Bowmans.

Q. The Blackwood colliery, is that the only colliery on your division? A. Yes.

Mr. Machen: The only colliery belonging to the Lehigh Valley Railroad or the only colliery of any kind.

The Witness: Of any kind. 5642

Q. The only colliery belonging to anybody on your division? A. Yes.

Q. I show you a chart marked "Lehigh Valley Railroad Exhibit No. 54," and ask you whether the information therein contained which relates to your division is correct? A. It is correct.

Cross-Examination by Mr. Machen:

Q. That is to say, that Blackwood—the only railroad 5643
except the Lehigh Valley within a mile of the Blackwood colliery is the Philadelphia & Reading? A. Yes.

Q. And the Philadelphia & Reading is about 900 feet away? A. Yes.

Q. And you estimate the cost at $16,300 to make a connection between the Blackwood colliery and the Philadelphia & Reading Railway? A. Yes, sir.

Q. Upon what do you base your estimate of $16,300? A. Grading, cost of track and cost of track materials.

Q. Are you an engineer? A. Civil Engineer? No, 5644
sir. A civil engineer makes all these figures of estimates for me.

Q. The $16,300 was not an estimate made by you? A. Made by my office, the division engineer.

By Mr. Boles:

Q. It was made under your supervision and direction? A. Made under my supervision and direction, yes.

Q. By one of your employes? A. Yes.

Q. Who works for you? A. Yes.

5645 Q. What is the significance of the sixteen degree curvature which you mention; is it practical to operate on that curvature? A. Not without specially designed power.

Q. What amount of track could you abandon or tear up on your division if the Blackwood mine were exhausted? A. 7.9 miles and plus.

By Mr. Machen:

Q. Was this branch built to connect with the Black-
5646 wood colliery? A. Yes.

Q. The 7.9 miles of track was constructed in order to reach the Blackwood colliery? A. No; the length of that branch is about five miles in length, but all the tracks included in that branch would constitute seven or eight miles of track.

Q. From what point to the Blackwood colliery was the road built for the purpose of reaching the colliery? A. From Blackwood Junction.

Q. How far is that from the colliery? A. That is about between four and five miles.

5647 Q. What was the cost of construction? A. I don't recollect those figures.

Q. Was it a line from the junction—— A. The line was built for that express purpose.

Q. When was the line built from Bowmans to Blackwood Junction, sometime in the early nineties, wasn't it? A. Yes, sir.

Q. What city does that reach, Pottsville? A. We operate over the People's Railway to get into Pottsville, but that line which you mention runs as far as York
5648 Farm Junction—the People's Railway runs across from Minersville to Pottsville.

Mr. Boles: It is a half mile out of Pottsville?

The Witness: About one mile and one-half out of Pottsville.

By Mr. Boles:

Q. What is the distance from Bowmans to Blackwood Junction? A. I think it is 35 miles.

Q. Are there various points along it from which you 5649
collect merchandise freight? A. Yes.
Q. And distribute merchandise freight? A. Yes.

By Mr. Machen:
Q. In any considerable quantity? A. Well, there are several trains a day.
Q. Several trains a day; what kind of trains, passenger trains? A. Mixed trains; mixed freight, coal and passenger.

5650

George J. Gildroy, recalled on behalf of the Lehigh Valley Railroad Company.

Direct Examination by Mr. Boles:

Q. What is your position? A. Superintendent of the Mahanoy & Hazleton Division, Lehigh Valley Railroad.
Q. Between what points does that division extend? A. Main line from Penn Haven Junction to Mt. Carmel.
Q. How many miles in your division? A. About two 5651
hundred and some odd miles; that is including the branches; 51 miles and a fraction between Penn Haven and Mt. Carmel.
Q. I show you a map entitled "Lehigh Valley Railroad Company, Mahanoy and Hazleton Division, Map showing the Delaware, Susquehanna & Schuylkill Railroad, Office of Division Engineer, Hazleton, Pa., July 15, 1914. D. S. & S. in November, 1905," and ask you whether that was prepared in your office? A. Yes.
Q. Under your direction? A. Yes, sir.
Q. Is it correct? A. It is as near as I can tell. 5652

Mr. Boles: I offer the map in evidence.
(Marked **Lehigh Valley Railroad Co. Exhibit 75.**)

Q. Are the indications thereon representing the mileage of the Delaware, Susquehanna & Schuylkill on November, 1905, the mileage of the M. & H. Division of the Lehigh Valley and the total mileage of the Lehigh Val-

5653 ley not including the Delaware, Susquehanna & Schuylkill, correct? A. Yes. Those parallel lines represent the respective lengths of the Delaware, Susquehanna & Schuylkill, the M. & H. Division, and the total Lehigh Valley, exclusive of the Delaware, Susquehanna & Schuylkill.

Q. What is the longest distance between any colliery on the Delaware, Susquehanna & Schuylkill Railroad and any connecting line in the normal course of the movement of traffic? A. A little over 20 miles.

5654 Q. Between what points? A. That is between Deringer and what is now Ashmore.

Q. As shown on this map? A. Yes.

Q. Ashmore formerly was called Lumber Yard? A. Yes, it was at that time about twenty miles.

Mr. Machen: From Ashmore to Deringer?

The Witness: What was Lumber Yard then to Deringer on the Delaware, Susquehanna & Schuylkill Railroad.

5655 Q. I show you a statement entitled Lehigh Valley Railroad Exhibit No. 54, and ask you whether the information shown thereon in respect of the Lehigh region is correct? A. Yes, sir.

Q. I show you a statement entitled "Statement of Mileage of Mahanoy & Hazleton Division at the present time and when tracks are lifted account of mines being exhausted." Was that statement prepared in your office? A. It was.

Q. Is it correct? A. Yes, to the best of my knowledge it is.

5656 Mr. Boles: I offer that in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 76.**

Direct Examination by Mr. Warren:

Q. Mr. Gildroy, your division covers the trackage of the Lehigh Valley Railroad into the Markle collieries, does it not? A. Yes, sir.

Q. What railroad runs to the Markle colliery? A. The Lehigh Valley Railroad.

Q. Is there any other railroad into the Markle colliery? A. No, sir. 5657

Q. Then as an initial carrier Markle Company is shipping their production to the market by rail would necessarily use the Lehigh Valley Railroad for a certain distance? A. Yes.

Q. Now, tell us where the first point of connection is from their collieries with any other railroad aside from the Lehigh Valley? A. The Pennsylvania Railroad at Tomhicken.

Q. Tell us, please about how far away from the near- 5658
est Markle operation is Tomhicken? A. On the direct route——

Q. That is by rail I mean. A. Yes; the direct route; it would be between eight and ten miles.

Q. And you say that is the Pennsylvania Railroad? A. The Pennsylvania Railroad, yes, sir.

Q. Then, from Tomhicken—at Tomhicken—the Pennsylvania Railroad, that being the nearest point to any of its collieries could take Markle coal, and if it did, if you know, will you tell us in which direction it would then
move by rail of the Pennsylvania Railroad? A. Move by 5659
Tomhicken to Sunbury and from there, of course, diverge in different directions.

Q. Now, Sunbury is at the junction of the two branches of the Susquehanna River and north of Harrisburg, and from there it is about 50 or 60 miles, is it not? A. Yes; I don't know the exact distance.

Q. It is in that neighborhood, isn't it? A. Yes.

Q. About due north of Harrisburg? A. Yes.

Q. You have told us of the Pennsylvania Railroad connection at Tomhicken; what other railroad is any- 5660
where near the Markle operation and if so, how near aside from the Lehigh Valley and the Pennsylvania? A. The Central Railroad of New Jersey at Sandy Run Junction.

Q. What branch, if you know, of the Central Railroad is that? A. I think it is called the Upper Lehigh branch.

Q. Is that for the purpose of serving certain collieries in the vicinity of Sandy Run? A. They have one at Sunday Run on a branch.

5661 Q. Is it more practical there for the shipping of the Markle coal? A. No; we have 169 feet of ascending grade.

Q. In other words, that is not a practical route for the shipment? A. I would not like to operate much coal over it.

Q. You have named the Central Railroad of New Jersey and the Pennsylvania Railroad; is the Philadelphia & Reading Railway Company in there in that locality? A. They have a connection at Roan on the Delaware,
5662 Susquehanna & Schuylkill Railroad, or what was called the Delaware, Susquehanna & Schuylkill Railroad.

Q. How far from the Markle property is that? A. That is probably from eight to ten miles.

Q. Now, speaking of the Delaware, Susquehanna & Schuylkill Railroad, is that into the collieries with spur lines or branch lines of the Markle, or any of them? A. No, sir.

Q. Has it ever been? A. Not to my knowledge.

Q. And your knowledge goes back how many years? A. To 1899.

5663 Q. If you know, who owns the track and the railroad that reach from the Markle collieries and go under the chutes of the collieries; does the Lehigh Valley Railroad own tracks into the collieries of the Markle Company? A. Three of the tracks.

Q. How many operations are there of Markle? A. Four.

Q. Then it goes into all but one? A. Yes, sir.

Q. And, if you know, who owns the track under the one? A. The G. B. Markle Company.

5664 Q. What is the length of the track which they own before they reach the line of the Lehigh Valley Railroad at that single junction? A. The main track switches leading into the breaker tracks.

Q. And what would you say was the length of their tracks? A. Oh, several thousand feet.

Q. Should you say less than a mile? A. Oh, yes.

Q. Now, the tracks that the Lehigh Valley Railroad own and operate into these three colliery properties of the G. B. Markle Company have been there how many years, so far as you know? A. They were there in 1899.

Q. And have been there ever since? A. Yes. 5665

Q. And these tracks consist of what, going into the single operation as to Markle? A. In two of the operations there is a branch running to the operation of between half a mile and a mile in length, that is two of the operations, and then the loading and empty-stand tracks and the tracks under the breakers.

Q. Sometimes referred to as the tail tracks of the colliery? A. Yes. And the other tracks lead from the main track.

Q. What would you say as to the practicability of any 5666
other railroad building into and under the chutes of the breaker of G. B. Markle Company at these three operations to which you refer; what would you say as to the practicability or otherwise of another railroad building in there these spur lines of which you speak, to the three colliery operations of Markle Company? A. Independent of the tracks that we have?

Q. Yes. A. It would mean the alteration of the breaker to get their tracks in.

Q. How about the physical condition of the ground 5667
in the vicinity of the breakers themselves along those tracks? A. It would be a very expensive arrangement to get to them.

Q. So that you can say, I presume, that the G. B. Markle Company can be more advantageously served as an initial carrier at any rate out of their collieries by the Lehigh Valley Railroad than any other? A. Yes, it can be.

Q. There is no question about that, is there? A. There is no question about that.

Q. And the matter of transshipment either at Tom- 5668
hicken or at any other point with any other railroad is quite a different proposition? A. Yes, sir.

Q. Except as to Sandy Run where I understand you to say that it would be impracticable in your judgment? A. Yes, sir.

By Mr. Boles:

Q. Referring again, Mr. Gildroy, to Lehigh Valley Railroad Exhibit No. 54, do you know of any other rail-

5669 road other than those mentioned in respect to the Lehigh region that could practicably connect with any of the collieries other than the carriers shown? A. No, I do not.

Q. Pardee Brothers & Company operating what are known as the Latimer Mines, does your division of the Lehigh Valley Railroad serve their collieries? A. Yes.

Q. And haul for them a very large quantity annually of anthracite coal, do you not? A. Yes.

5670 Q. Does C. M. Dodson & Company operate and mines on the lines of the Lehigh Valley Railroad on your division? A. They operate Beaver Brook.

Q. Do you haul their tonnage? A. Haul a portion of it.

Q. In what quantities would you say annually? A. I don't have the tonnage any more than what is on this sheet, and I did not have anything to do with the compiling of that tonnage.

Q. Do you know what other railroad handles the tonnage of this colliery? A. Central Railroad of New Jer-

5671 sey.

Q. I asked you the other day about J. S. Wentz & Company; do you know the Harleigh-Brookwood Coal Company? A. Yes.

Q. And does the Lehigh Valley in your division serve that colliery and haul their coal? A. Yes, it does.

Q. All of it? A. All of it.

Q. Do you know a colliery known as the Coleraine? A. Yes.

Q. I believe that is operated by what is known as the

5672 Van Wickle Estate? A. A. S. Van Wickle Estate.

Q. Does your railroad and your division serve that colliery? A. Yes.

Q. And you haul a certain proportion of their production? A. Yes.

Q. And does the Central Railroad of New Jersey haul a certain portion of it likewise? A. Yes.

Q. Do you know the Mill Creek Coal Company at Middle Lehigh? A. Yes.

Q. Do you haul any of their coal? A. We do.

Q. And does the Pennsylvania Railroad haul some of 5673
their coal? A. Yes.

Q. You are not now able to state the proportion as between the two railroads? A. No, sir, I am not.

Q. Do you know a concern known as the Dodson Coal Company at Morea? A. Yes.

Q. Do you haul any of their coal? A. We do.

Q. And does the Philadelphia & Reading haul some of their coal? A. No; the Pennsylvania Railroad; but the majority of the coal, I think, is in Reading cars.

Q. It is reported to us as the P. & R.? A. Pennsyl- 5674
vania Railroad.

Q. They haul it in P. & R. Railroad cars? A. Yes.

Q. I think I asked you about C. M. Dodson & Company at Beaver Brook, did I not? A. Yes.

Q. And you said you did haul a large tonnage from that operation? A. Yes.

Q. And I understood you to say the Central Railroad of New Jersey also hauls tonnage from that same colliery? A. Yes. At Coleraine the Reading also gets in as well as the Central Railroad of New Jersey. The two operations, they operate over the Beaver Meadow, 5675
Tresckow & New Boston Railroad to get in there.

Q. Does that appear on this exhibit? A. Yes, sir.

Q. Mr. Gildroy, I think I asked you before about the extent to which there was any competition for traffic between the Delaware, Susquehanna & Schuylkill Railroad and the Lehigh Valley Railroad at the time of the acquisition of the stock of the former by the latter, that is, in November, 1905; have you looked into the matter any further? A. Not any further. I could not say that there was anything to look into any more than there was 5676
no material competition at any point except I mentioned a few cars going into Drifton and possibly a little bit of merchandise outside of mine supplies.

Q. Mr. Gildroy, do you know of any discrimination in the way of distribution of cars or switching facilities or hauling of cars or of any kind, or, as the Government says in its petition, "or otherwise," between the Lehigh Valley Coal Company and the Lehigh Valley Coal Sales Company and other shippers of coal on your division? A. No, sir.

5677 Q. Are they all treated exactly alike? A. They are as near as a man can do it.

Q. Do parts of your division sometimes disappear? A. They do.

Q. Explain how? A. By mining under the tracks which causes a settling or what is known as a depression and frequently a cave-in, making a very large opening.

Q. Is it expensive to bring the track back to position? A. Sometimes takes several hundred cars of material in some instances.

5678 Q. Are you constantly engaged in shifting your tracks and making changes in order to keep on firm ground? A. Well, at times we are, and at times we have only to fill up those points.

Q. And where it is impracticable to fill them up you have to change the whole alignment of the tracks? A. Yes.

Q. What is the Hays Creek branch? A. It was built for the movement of west-bound coal.

Q. From where to where? A. From Ashmore to Tannery.

5679 Q. Is Tannery on the main line? A. Yes.

Q. And was it an expensive construction? A. Very.

Q. What did it cost? A. I cannot say the exact amount; in the neighborhood of a million dollars.

Q. And how long is it? A. Thirteen miles. It has three very large bridges on it; it crosses the Lehigh River and crosses the Central Railroad of New Jersey twice.

Q. That enables you to ship west-bound coal from the Lehigh region without the necessity of going all the

5680 way around via Penn Haven Junction? A. Yes.

Q. Is there a large volume of tonnage from all these collieries shown in the Lehigh region which moves west-bound? A. Yes.

Q. Does every one of them ship west-bound coal? A. I think without any exception they all ship more or less.

Q. Did you ever hold any position with the Lehigh Valley Coal Company? A. Never did.

Q. Or Coxe Brothers & Company? A. No, sir.

Q. Or any of the coal companies mentioned in the Lehigh Valley Railroad Exhibit No. 54? A. No, sir. I have been in the railroad business since a boy. 5681

Q. Do you make contracts for pipe line crossings and overhead wires with the Lehigh Valley Coal Company and Coxe Brothers & Company? A. Yes.

Q. Are contracts of that kind being made from week to week or month to month? A. Yes.

Q. And are you from time to time making similar contracts with all the other coal companies mentioned in your region? A. Yes, sir. 5682

Q. The Lehigh region? A. Yes, sir.

Q. And are the contracts always on the same basis? A. The contracts are on the same basis; made up in the same manner all other contracts or agreements are made.

Q. Have any of the coal companies mentioned in the Lehigh region under Exhibit No. 54 built any track to connect with your railroad? A. One of the Markle collieries built their own track, the one I mentioned to Major Warren. They merely made the connection from the main track in. 5683

Q. How long a track did they build? A. I should think it will hold about 80 cars besides the track under the chute; between 30 and 40 loaded cars and 30 and 40 empty cars—stand-track.

Q. Would you be glad to get track connections with any colliery within a practicable construction distance of your rails? A. To get a tonnage, yes, we would.

Cross-Examination by Mr. Machen:

Q. Mr. Gildroy, are you a civil engineer? A. I am not. 5684

Q. Did you, like Mr. Ross, rely upon some one in your employ or under you for the information contained in the last column of the Lehigh Valley Railroad Exhibit No. 54, showing the engineering facts in regard to the cost of construction? A. I went over the ground myself.

Q. Did you have any assistance I mean; did you come to these conclusions on your own judgment alone? A. I did, and with the judgment of the engineer.

Q. Of an engineer? A. Yes.

5685 Q. An engineer in the employ of the railroad? A. Yes.

Q. Of the Lehigh Valley Railroad? A. Yes.

Q. Who is he? A. He is the division engineer of the Mahanoy & Hazleton division.

Q. Who is he? A. Mr. T. J. Burke.

Mr. Boles: He is your division engineer?

The Witness: Division engineer, yes, sir.

Q. In this Lehigh Valley Railroad Exhibit No. 54, you treat the Delaware, Susquehanna & Schuylkill Railroad
5686 as part of the Lehigh Valley Railroad, don't you? A. Yes, sir.

Q. That is to say, when you show that no other railroads are located within a mile of any given colliery, you do not mean to include the Delaware, Susquehanna & Schuylkill? A. And in some places the Delaware, Susquehanna & Schuylkill goes into these collieries.

Q. In some places the Delaware, Susquehanna & Schuylkill is one of the roads which reaches the collieries? A. Yes.

5687 Q. For instance, did the Delaware, Susquehanna & Schuylkill reach the Jeddo Colliery of G. B. Markle & Company? A. No, sir.

Q. How close did they come to it? A. To which one, the Jeddo 4 or Jeddo 7?

Q. Each one. A. From Jeddo 4 they were, well, I would say almost two miles.

Q. And how far from the other one? A. And a little over two miles further from the other one; almost five miles.

Q. Was the Drifton colliery of Coxe Brothers & Com-
5688 pany reached by the Delaware, Susquehanna & Schuylkill? A. Yes.

Q. Was it also reached by the Lehigh Valley Railroad? A. Not directly. We had a connection arranged so we could get there, but we had to be connected with the Delaware, Susquehanna & Schuylkill.

Q. Now, prior to 1905, the Delaware, Susquehanna & Schuylkill was engaged in transporting anthracite coal from collieries in the Lehigh region to Perth Amboy and New York Harbor, was it not? A. Yes.

Q. To Perth Amboy? A. Perth Amboy. 5689

Q. They were actually engaged in that occupation? A. Do you mean on the Lehigh Valley tracks?

Q. Used the Lehigh Valley tracks for part of the distance under a trackage contract? A. I don't know what the contract was.

Q. The contract has been offered in evidence. A. Yes.

Q. And the Lehigh Valley Railroad Company was also engaged in transporting anthracite coal from the Lehigh Valley coal region to Perth Amboy, New Jersey? A. Yes, sir.

Q. In this Lehigh Valley Exhibit No. 75, which is a 5690 map of the Mahanoy & Hazleton Division, in the lower left-hand corner the long line indicated as "Total L. V. except D. S. & S." represents the total mileage of the entire Lehigh Valley system, exclusive of the Delaware, Susquehanna & Schuylkill, doesn't it? A. I think that is what it says. I suppose that meant the total of the Lehigh Valley system. A. (After examining the map.) A. Yes.

Q. How far was the haul by the Delaware, Susquehanna & Schuylkill Railroad from Drifton colliery to 5691 Tomhicken Junction or Gum Run Junction? A. I would judge between 20 and 22 miles for the Delaware, Susquehanna & Schuylkill tracks.

Q. I thought you said that from Lumber Yard to Tomhicken was over 20 miles. A. Then I misunderstood the question. I cannot give the exact mileage. I am just judging that. Drifton is four or five miles.

Q. About five miles from Lumber Yard? A. Yes; it is a very circuitous route.

Q. How are the grades in your division; are they 5692 heavy, or—— A. We have some very heavy grades; yes.

Q. How are the grades on the Delaware, Susquehanna & Schuylkill? A. They have some heavy grades also; not as heavy as they have on the Lehigh Valley road.

Q. Not as heavy as these grades getting down to the river or coming up from the river to the mines? A. No.

Q. There are a number of collieries on your division belonging to the Lehigh Valley Coal Company and Coxe Brothers & Company, aren't there? A. Yes.

5693 Q. Both of these corporations are actively engaged in mining at these collieries, are they? A. Mining coal lands, yes.

Q. But they have machinery and so forth at the mines, at their breakers? A. For the preparation of coal?

Q. Preparation of coal? A. Yes.

Q. Can you describe in a general way of what their operations consist at any typical colliery? A. I am not a mining man and I could not enumerate the preparations at the breakers.

5694 Q. They have machinery which must be brought there, I suppose; they don't manufacture machinery, do they? A. I think not. I would not be able to say that though.

Q. When you speak of the amount of tracks which are to be lifted when the mines are exhausted, do you mean to say that you estimate that there are certain tracks on your line which will be useless some time in the future; you don't know when? A. I cannot see that for any reason they would be necessary.

Q. Unless the conditions should change? A. It is a section of the country that I cannot see that any conditions
5695 would change. A mountainous country, and there is nothing else there, nothing more. I went over that very carefully. Some conditions might change, but nothing at the present time that would seem to be able to.

Q. Does the land on which the Markle breakers are built belong to the G. B. Markle Company? A. I can't say.

Q. It does not belong to the Lehigh Valley Railroad? A. To the best of my knowledge it does not. I think some of it belongs to G. B. Markle & Company.

5696 Q. Or they may lease it from some one else? A. I cannot say that; I cannot answer.

Q. When you said that the tracks underneath these breakers belonged to the Lehigh Valley Railroad Company, you meant the rails belong to the Lehigh Valley? A. Yes.

Q. And that was all? A. Yes. There is nothing else there but the tracks, and of course that takes the tracks.

Q. Mr. Gildroy, in Lehigh Valley Railroad Exhibit No. 54, where you say the Drifton branch of the Central Rail-

road of New Jersey has not been in operation for a num- 5697
ber of years between Drifton Junction and Drifton, a distance of about 10 miles, this would have to be renewed. Was that Drifton branch the branch which formerly connected with the Delaware, Susquehanna & Schuylkill? A. Not since I have been there.

Mr. Boles: Not since 1899?

The Witness: Not since 1899. There have been no operations over it since 1899.

Q. That is the only place where the Central Railroad 5698
of New Jersey has ever touched the Delaware, Susquehanna & Schuylkill, isn't it? A. Yes.

Q. Major Warren asked you what is the nearest point at which any other railroad of the Lehigh Valley or the Delaware, Susquehanna & Schuylkill approached one of the Markle Collieries, what did you answer? A. I think I answered Sandy Run Junction, which is possibly about between six and eight miles—I cannot give the exact distance.

Mr. Warren: That was the Pennsylvania to 5699
Tomhicken?

The Witness: Yes, and the Central Railroad of New Jersey at Sandy Run Junction.

Q. Where is Sandy Run Junction on this map? A. It lies between Hazleton and Penobscot. It is not in there.

Q. How far is that from the collieries? A. I would judge about six miles from two of them and eight to ten miles from the others.

Mr. Boles: That is the extreme north end of 5700
your division isn't it? A. Yes, sir.

Q. There are in your division several collieries which are reached by more than one railroad, are there not? A. Yes.

Q. Is there any colliery owned or operated by the Lehigh Valley Coal Company or by Coxe Brothers & Company, Inc., that is reached by more than one railroad? A. No, sir.

5701 Q. That is, not unless you treat the Delaware, Susquehanna & Schuylkill as a separate railroad? A. No.

Q. You testified before, didn't you, that some of the Pardee collieries were on the Delaware, Susquehanna & Schuylkill Railroad? A. No, I did not.

Q. You testified that they were very near, didn't you? A. No, they are a considerable distance away.

Re-Direct Examination by Mr. Boles:

Q. The exhibit shows, does it not, Mr. Gildroy, as to
5702 every colliery of the Lehigh Valley Coal Company and Coxe Brothers & Company that there are no railroads within a mile or, if there are any within a mile, it is not practicable to have them connected for the reason you have stated? A. Yes.

Q. And I believe you have gone still further and said that it is not practicable to connect with any collieries in your region except as herein shown? A. That is right.

Q. Are you the man that actually runs the M. & H. Division of the Lehigh Valley Railroad? A. Yes, sir.

5703 Q. You are the boss and you run it? A. I might be so called.

Q. Have you got anything to do with mining business? A. No, sir.

Q. Ever had? A. No, sir.

Q. Tell us in your own language in reply to Mr. Machen's question about the possibility of some of these tracks being used for some other use, some day, just what kind of country it is that you work the railroad in up there? A. It is a mountainous country, some few towns in there which are practically built up on account
5704 of the mining purposes. With few exceptions that is all there is. Take Hazleton, for instance, there are some little industries there, and, we think that a single track

there except the homes of the miners and nothing growing except huckleberries.

Q. Is it a barren and wild and desolate country, which is practically uninhabited except by the people engaged either directly or indirectly, only in the employ of the different coal companies as miners or breaker employees,

or else working for the railroad that carries the coal? A. Practically, yes, except the small business houses or stores that are connected with the town. 5705

Q. Where the miners and employees buy their supplies and edibles? A. Yes.

Q. Any trees on it? A. Very few.

Q. Any grass? A. Very little.

Q. People up there hardly ever see grass, do they? A. There is no grass in my yard.

Q. Aren't there points on your division where mining has been actually abandoned and when the mine died the whole town died with it? A. Yes. 5706

Q. And the people moved away and the houses stood there idle and desolate ever afterward? A. Yes.

Q. Can you name a few? A. Yes. I will take—Silverbrook, which was quite a town, and I don't know how many houses there were. It was quite a large town; had a telegraph office, post office and telephones. I think there are two or three houses up there now. The tracks are torn up.

By Mr. Machen: How many miles of track have been torn up in your division in the last ten years account of the exhaustion of coal? A. I have never figured that, but there is quite a number of small branches. 5707

By Mr. Boles: I will admit there have been very few mines exhausted so far.

The Witness: We have taken up quite a lot of little pieces of track.

Re-Cross Examination by Mr. Machen:

Q. A mile or so of track? A. Oh, no. One branch was over three miles in length. 5708

Q. How much traffic is there in [illegible] from Hazleton to New York? Q. Out of Hazleton?

Q. Yes. A. Taking the merchandise, some of it is brought in from——

Q. I am asking you how much is shipped from there? A. From Hazleton industries?

Q. Yes. A. I would not think over eight or ten cars a day, possibly not that.

5709 Q. Does it move in carload lots? A. Some of it, and some of it in less than carload lots. Some shirt factories and silk mills. One pump works there, which is not doing very much at the present time, and some other iron works on a small scale. The freight is gathered up.

Q. Have you any idea how large a place Hazleton is? A. I should say about 28,000 at the present time. I think the last census gave it 26,000, and some hundred, but it is growing some.

5710

Cornelius J. Shea, called on behalf of the Lehigh Valley Railroad Company, being first sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. What is your position? A. Superintendent of the Wyoming Division, Lehigh Valley Railroad.

Q. How long have you held it? A. Four years.

Q. I show you a statement marked Lehigh Valley
5711 Railroad Exhibit No. 54 and ask you whether the statements thereon shown that relate to the Wyoming Division, are correct? A. Yes, they are.

Q. Was the information compiled in your office? A. Yes, with the exception of the tonnage.

Q. That has been proved by another witness. Under your direction and supervision? A. Yes.

Q. Do you corroborate all the remarks shown thereon under the head of reasons why connection from other railroad or railroads has not been made? A. I do.

[illegible]

Q. Between what points does the Wyoming Division run? A. Penn Haven Junction to Athens, Pennsylvania.

Q. Penn Haven Junction, is that south of the Wilkes-Barre Mountain? A. Yes.

Q. About how many tons of anthracite coal do you run over the Wilkes-Barre Mountain, the tonnage of which originated in the Lehigh region, a day? A. We run about three trains of 55 or 60 cars each.

Q. Every day? A. That would be about the average. It requires three locomotives to handle those trains on the Wyoming Division up the mountain.

Q. It takes three locomotives to haul them on your di- 5713
vision, that is from Penn Haven Junction—— A. From Tannery, where the junction is of the Hays Creek Branch to Fairview at the top of the mountain.

Q. You pick them up at the end of the Hays Creek Branch? A. Yes.

Q. And then haul them up the Wilkes-Barre Mountain? A. Yes.

Q. How many trains of coal per day do you move southbound from the Wyoming region over the Wilkes-Barre Mountain? A. I should say that we average from 5714
three to four trains.

Q. A day? A. Yes.

Q. How many locomotives pull each train over the mountain south bound? A. Two or three; some trains run in what we call two engine trains, others in three engine trains.

Q. That is because the grade running south is more gradual than the grade running north? A. Not always. It is because of operating conditions. Where we might require some power at the other end of the line, we 5715
would run it in a two engine train.

Q. If the shippers in the Wyoming Division were good enough to ship all of their coal to the north, and if the shippers of the Lehigh region were good enough to route all of their coal to the south, could you effect a considerable reduction in your operating expenses? A. Yes, for the reason that these trains pass on the mountain; a train of coal from the Lehigh region will be coming up and a train of coal from the Wyoming division will be coming in the opposite direction.

Q. In other words, you have an average of three 5716
trains of how many cars? A. Fifty-five cars.

Q. Three trains of fifty-five cars, that would be 165 cars a day, and what would be the tonnage of those on the average? A. Why 35 tons of coal to the car.

Q. Then take the average per car to the train and three trains per day, and the average load at 35 tons, you would have in the neighborhood of 6,000 tons per day hauled over the Wilkes-Barre Mountain to the north passing 6,000 tons hauled over the Wilkes-Barre Mountain to the south? A. Approximately, yes.

8717 Q. You are the actual operator of the mining region, are you not? A. Yes.

Q. You run the railroad? A. Yes.

Q. You are the czar of your own territory? A. Yes.

Q. Are you acquainted with the mining business? A. No, sir.

Q. Did you ever hold any position with the Lehigh Valley Coal Company? A. No, sir.

Q. Coxe Brothers & Company? A. No, sir.

Q. Any coal Companies at all? A. No, sir.

8718 Q. Never did? A. No, sir.

Q. Did you have anything to do, in any way, with the coal mining operation? A. No, sir.

Q. Does any discrimination exist in any form by distribution of cars or switching or otherwise, which the Government says exists on your division, between different shippers of coal? A. No, sir.

Q. Do you meet the different physical difficulties in reference to operation that Mr. Gildroy has mentioned as existing in the Lehigh region, such as subsidence of tracks, and the disappearance of part of your lines and

8719 tracks, because the ground gives way? A. We do, with the exception of the changing of our tracks. We do not have very much of that. We have to fill in holes, but we don't have the opportunity of changing our lines as they do over in the other region.

Q. You mean you do not get the warning of the crash? A. Our right of way is such that we cannot always throw our tracks out to avoid these cave-ins. We have to fill them in.

Q. Will you explain what changes you have under way

8720 at the present time on your main line on account of the danger of subsidence? A. We have about approximately two miles of our main passenger line up the Wilkes-Barre Mountain, that we are changing the location of in order to avoid the possibility of a settlement due to the fact that there is a coal company about to remove the coal that lies under our tracks in their present location.

Q. And is it a question of either buying the coal or changing your tracks? A. Yes.

Q. What company is it that is mining or is about to mine the coal under your main tracks, that you have just

referred to? A. The Delaware, Lackawanna & Western Railroad. 5721

Q. I show you a statement entitled "Wyoming Division, Statement showing trackage which we now have laid, and in use which will be ultimately useless on account of the exhaustion of the mines," and ask you whether that statement was prepared in your office? A. (After examination of the statement.) Yes.

Q. Is it correct? A. It is to the best of my knowledge.

Mr. Boles: I offer the statement in evidence. Marked **Lehigh Valley Railroad Company Exhibit No. 78.** 5722

Q. Are the geographical conditions in the coal regions on your division about the same as those described by Mr. Gildroy on his division? A. I did not hear his description, but from my knowledge of the conditions that he has there, they are practically the same on the Wyoming Division.

Q. You have been over the M. & H. Division and know the character of the territory which it covers? A. Yes. 5723

Q. In addition to information shown on Lehigh Valley Railroad Exhibit No. 54, is there any railroad at any point within a practical building distance of the collieries shown, other than those shown? A. Other than those shown?

Q. Yes. This exhibit states located within a mile; now, are there any anywhere that are within a practicable building distance of any of these collieries? A. Not

Q. Do you from time to time enter into contracts with the Lehigh Valley Coal Company and other coal companies for maintaining pipe lines, crossings under your right of way, etc.? A. Yes. 5724

Q. Do you put all coal companies under exactly the same restrictions and prohibitions in those contracts? A. Yes.

Q. Do you treat them all exactly on the same basis? A. Yes.

Q. Is the same thing true as to contracts for over-head wire crossings? A. Yes.

5725 Q. Or any other kinds of contract? A. Yes.

Q. Is every coal company treated alike? A. Yes.

Q. And are you in the course of making those contracts from week to week and month to month? A. Yes, sir.

Q. Would you be willing to make a track connection with any colliery in your region not now connected with the Lehigh Valley Railroad, and located within a practicable building distance? A. I would if it did not interfere with our own operation.

5726 Q. What do you mean, your own operations? A. I mean the operations of the Lehigh Valley Railroad. For example, if they went to cross us at grade, or something of that kind, so that they would interfere with our operations, I would expect to impose restrictions so that it would not make it any more expensive for us to operate than at the present time.

Q. Did you recently put in a switch connection in order to get tonnage from the Kingston Coal Company? A. Yes.

5727 Q. As to all the collieries in the Wyoming region, with which you do not now have a track connection, I understand you are entirely willing to make a track connection, if it is a practicable thing to do it and will not interfere with your present railroad operations; you are glad to get all the tonnage over your division you can, aren't you? A. Yes.

Q. No matter whose coal it is? A. Yes.

Q. You are there to carry traffic, and you want to carry every pound that you can? A. Yes.

5728 Direct Examination by Mr. Warren:

Q. Referring to Lehigh Valley Railroad Exhibit No. 54, it says it is a chart showing anthracite collieries operating during the year 1913. You have not indicated in this, so far as your own division is concerned, which covers the Wyoming region as I understand it, certain companies in what is called Bernice region, have you? A. No, sir.

Q. Waiving for the moment this geological survey distinction between semi-anthracite and anthracite,

there are situated in the Bernice Regions operations, 5729
are there not, on the line of your railroad, served by your railroad? A. Yes.

Q. The Northern Anthracite Coal Company, the Connell Anthracite Coal Company, and the O'Boyle Coal Company, they are the names of them, are they not? A. I believe they are, yes, sir.

Q. Aren't those collieries served by the Wyoming Division of the Lehigh Valley Railroad, and do you not carry coal from those properties, from those operations, both east bound and west bound, or does it all go west? 5730
A. It practically all goes west. I presume that few cars go east.

Q. Would you say that the combined tonnage of those operations would be at least a half million tons in a year, that you haul?

Mr. Machen: I object to an estimate because the exact amount is already in the records.

Q. You are familiar with the tonnage approximately handled by your division of the railroad at these operations, are you not? 5731
A. In a general way, yes.

Q. Would you not say that it amounted to at least a half-million tons in a year. A. I would not want to give it on a yearly basis. They load in that region probably an average of 50 cars a day, 35 tons to the car.

Q. Now, just tell us how those operations are reached by your division; it is reached by some branch, is it not? A. State Line & Sullivan Branch.

Q. Of the Lehigh Valley Railroad? A. Yes, of the Lehigh Valley Railroad.

Q. And that leaves the main line at what point? A. 5732
Towanda.

Q. And you have been Division Superintendent how many years? A. Four years.

Q. Prior to that where were you? A. Auburn, N. Y.

Q. So then would you say that during the four years you have been in charge of that division you have been carrying practically the tonnage that you estimated here per day from all those operations? A. I would, yes.

5733 Q. You would not know, I assume, whether that coal was carried as far as Buffalo? A. I would not, except to this extent, that I have seen the bills of lading that carried it to Buffalo.

Q. Then you have seen bills that carried that to Buffalo? A. Yes.

Q. And your division ends at Athens? A. Yes.

Q. That is practically the State Line between Pennsylvania and New York? A. It is within two miles of the state line.

5734 Q. Now, at Mount Lookout colliery I notice your report states a tonnage of approximately 150,000 tons, which you carried, and you say that the Delaware, Lackawanna & Western are connected with that operation; do they not take coal from that colliery to your knowledge? A. Yes, they do.

Q. And what would you say as to the comparison as to the quantity you haul from that colliery, and the quantity the Lackawanna hauls, from your knowledge? A. I should say it was about equally divided.

Q. I note from Lehigh Valley Railroad Exhibit No. 54
5735 it is stated substantially as you say, that the tonnage is approximately the same between the two companies. Do you know the situation of the two collieries of the Forty Fort Coal Company, that is to say, the Forty Fort, and the one known as Harry E. Do you know how far apart they are? A. Less than a mile.

Q. The Forty Fort colliery, you say that the Delaware Lackawanna & Western is within 2,400 feet, or about 2,400 feet from it, is that right? A. Yes.

Q. And a connection there would not be practicable,
5736 don't you say that there? A. Yes.

Q. Just how do you get at that colliery from your main line? A. We have a branch.

Q. Starting where? A. Starting from our West Pittston division, our branch line.

Q. About how many miles away is that from the Forty Fort Colliery, six or eight miles, isn't it? A. From our West Pittston branch. Yes.

Q. To the Harry E. colliery? A. No, less than a mile.

Q. What is it, a small line put in from West Pittston to the Forty Fort Colliery? A. Yes.

Q. How do you connect with the Harry E? A. In practically the same manner. They are about the same distance from the West Pittston branch. 5737

Q. You have two lines from West Pittston Branch, the one leading to the Forty Fort, and the other to the Harry E? A. Yes.

Q. A separate railroad then? A. Yes.

Q. How do you connect with the Mount Lookout? A. In practically the same manner.

Q. How much of the line is simply for Mount Lookout? I mean simply to get to Mount Lookout colliery? There is a spur line built into Mount Lookout, is there not? A. Yes. 5738

Q. From the branch line running from West Pittston. Now, what is the length of that spur line running into it? A. Oh, I should say ¾ mile.

Q. And that is simply and solely for the purpose of reaching that colliery? A. Yes.

Q. It does not serve any other, nor is it for any other purpose? A. No, sir.

Q. How do you get to the Louise Colliery of the Raub Coal Company? A. Practically the same way. 5739

Q. Tell me what you call the same way? A. By building a branch line from our West Pittston Branch to the breaker.

Q. Have you got a branch that runs from the West Pittston branch of the Louise Colliery and serving no other purpose? A. It also serves the Black Diamond.

Q. Any other? A. And what is known as the East Boston Washery.

Q. Is there not a small line from that line into the Louise Colliery? A. Yes. 5740

Q. And what is the length of that? A. Oh, 1,500 feet, probably, or 2,000.

Q. And that is simply and solely for the purpose of reaching that colliery to get the coal out of it? A. Yes, sir.

Q. You reach the Sibley Colliery by an extension from your Austin Branch, so-called, do you not; in other words, Sibley is north of Austin up the valley. A. We have a branch line from Austin to the Sibley collieries.

5741 Q. What is the length of that line? A. It is approximately 3,000 feet from the Austin Branch.

Q. Where does your Austin Branch connect with the main line? A. At Coxton.

Q. How far is it from Coxton to the Austin breaker? A. About eight miles.

Q. Any other collieries served between Coxton Junction and Austin? A. Campbell's Ledge, William A., Sibley and the Austin.

Q. Austin is up the valley from the William A., isn't
5742 it? A. Yes.

Q. And the Sibley is still further up the Valley from Austin? A. The extreme end of the line, the branch line.

Q. That is a branch that runs up the valley in the vicinity of Pittston northwesterly, does it not? A. From the vicinity of Coxton, yes.

Q. It runs northerly, does it not? A. Yes.

Cross-Examination by Mr. Machen:

5743 Q. Mr. Shea, how many collieries, anthracite collieries, are there along your line? I count 27, is that correct? A. They are all shown on here with the exception of those in the Bernice region.

Q. I am not speaking of those, because Bernice coal is classified by the Lehigh Valley Railroad Company as bituminous, isn't it?

Mr. Warren: I object to that. That is an assumption. I don't know the truth of it myself, if they do classify it that way.

5744 Q. It is already in the records. I am speaking of the collieries shown in what is generally known as the anthracite region. How many collieries are there in your region? A. Twenty-seven.

Q. Of these how many are operated by the Lehigh Valley Coal Company? A. Ten.

Q. Is any one of the ten collieries operated by the Lehigh Valley Coal Company connected with any other railroads than the Lehigh Valley? A. No, sir.

Q. Of the remaining seventeen collieries on your di- 5745
vision, how many are connected with one or more railroads beside the Lehigh Valley? A. There are nine that have connections other than the Lehigh Valley.

Q. I counted ten; may be I made a mistake in the counting. Let us count them again? A. I guess I did not count the Florence.

Mr. Boles: You ought not count the Florence because the report is not in there.

Q. It seems to me that I counted ten without the 5746
Florence. Boston, one, Boston Washery, two, Harry E., three, the three Kingstons, six, and the Louise seven, Mount Lookout, eight, and the Sibley, nine—I counted the Sibley twice, that is what I counted. So that out of seventeen collieries operated by other persons or companies than the Lehigh Valley Coal Company, nine are connected with one or more railroads beside the Lehigh Valley? A. Yes.

Q. Is any one of these nine collieries operated by a company controlled by a railroad company? 5747

Mr. Boles: Objected to.

A. I haven't any knowledge.

Q. Is any one operated by the Susquehanna Coal Company? A. Not to my knowledge.

Q. Is any one of them operated by the Philadelphia & Reading Coal & Iron Company? A. Not to my knowledge. You can name every railroad, and if they are controlled by a railroad, I don't know it.

Q. You prepared this statement, didn't you? A. Yes. 5748

Q. And you know who operates these different collieries? A. As they are, no, sir. The Plymouth Coal Company, for example, they are shippers.

Q. They are the persons who ship over the road? A. Yes.

Q. I am asking whether any one of them is—— A. There is none of them shown here as being operated by a railroad.

5749 Q. Or by any company owned and controlled by a railroad?

Mr. Boles: Objected to.

The Witness: I don't understand that they are owned and operated by anybody controlled by, or any company controlled by a railroad.

Q. Where there is more than one railroad connected with a colliery on the Lehigh Valley, who determines how the coal is to move, and which railroad is to get it.

5750 A. The only answer I can make to that question is, that I furnish the cars ordered. We get a daily order from these operations, the coal companies or collieries, asking for a certain number of cars.

Q. Do you do your best to get the traffic? A. Yes.

Q. You bid for it by endeavoring to furnish the equipment and facilities to move the tonnage promptly? A. Yes.

Q. And satisfactorily? A. Yes.

Q. You were asked by Mr. Boles whether you would

5751 be willing to make a connection with other collieries not now connected with the Lehigh Valley Railroad, provided the connection could be made without injury to the business of the Lehigh Valley Railroad, and at a reasonable cost? A. Yes.

Q. And your answer was that you would? A. Yes.

Q. In making a decision upon that question, suppose you know that the owner of the entire capital stock of the company with which it was suggested you should make a connection was the other railroad company having a connection with the colliery, would that influence

5752 you? A. It would not. If we were reasonably sure of a tonnage from that colliery. In other words, as superintendent of the Wyoming Division it would be part of my duty to increase the tonnage of the railroad, and if by making a connection with another colliery, we could increase the tonnage, I would not be influenced as to who owned or controlled the output of that particular colliery.

Q. Suppose you knew in addition that there was a contract between the company owning the colliery and the

other railroad by which the operating company was bound to ship its entire output over the other railroad? 5753

Mr. Warren: I object to that question. There isn't any such thing established, proved, or dreamed of except by counsel for the Government.

A. That would not influence me, if I could get the tonnage.

Q. If you thought they would protect the contract? A. If I could get the tonnage that is all that would influence me in making the connection—to increase the tonnage of 5754 the railroad.

Q. And you think you would be likely to increase the tonnage by making such a connection? A. If we went to the extent of making a connection, of course, we would expect a reasonable guarantee of certain tonnage.

Q. You would expect a reasonable expectation; you would want to have reasonable grounds to believe you would get some of that tonnage? A. Certainly, if we went to the extent of building a connection.

Q. The connection with the Kingston Colliery has 5755 been made since you have been Superintendent of the Division, has it not? A. Yes.

Q. How much did that connection cost the Lehigh Valley Railroad? A. Why, I couldn't say from memory, but a very nominal sum, because their tracks were very close.

Q. Won't you describe or explain to me the situation with reference to the Florence Colliery? If I understand your chart correctly the Lehigh Valley Railroad has no direct access to this colliery? A. Well, it really is not a colliery at Florence. They have what you might call 5756 a culm pile. I don't know whether they have any operation under ground or not. They draw their coal in wagons. They order cars from us and we place them on a siding as we would for a load of hay.

Q. And you only get about 269 tons a year from them, and your road is about a mile from the colliery, or washery, or whatever it is? A. Yes; they haul about a mile.

Q. And the Delaware & Hudson is about half a mile? A. Yes, about half a mile.

5757 Q. Do they have to haul their coal to the D. & H. by wagons, too? A. If they ship any by the Delaware & Hudson, they have to haul in wagons.

Q. Coal is what is known as heavy freight, isn't it? A. I never heard it expressed in just that way, I don't know——

Q. I mean to say it loads more heavily to the car; a carload of coal weighs more than a carload of hay? A. Yes.

Q. You say, in fact, that a coal car will load on the
5758 average of 35 tons? A. Yes, sir; we have on the average, 35 tons.

Q. Would it cost more or less to haul that same amount of tonnage, in, we will say, four or five times the number of cars? A. Well, if you received it under the same conditions it naturally would cost less to haul one car than it would for five.

Q. What is the average load of a car of general merchandise? Could you give me any idea? A. Oh, I should say, offhand, 25 or 28 tons. About that I should say. I don't know that I have ever seen any figures
5759 worked up.

Q. Have you any experience in bituminous mining, you don't know whether this subsidence of track which you have testified to is a condition which has to be met with in the bituminous regions as well as anthracite regions? A. I have never been connected with such a railroad.

Q. Now, how about this Bernice region, where are the collieries situated in that region? A. At a point known as Bernice.

5760 Q. Are they all at that particular point? A. Well, within a radius of four or five miles.

Q. Is there any other railroad which reaches that point besides the Lehigh Valley? A. There is a railroad which is very close, the Williamsport & North Branch Railway.

Q. How far is that? A. Oh, I should say that they were within a half mile of the big operation, which is the Connell Coal Company.

Q. Has the Lehigh Valley Coal Company any operations in that region? A. No, sir.

Q. Are there any bituminous coal mines on the line 5761
of the Lehigh Valley Railroad unless you class as bituminous the Bernice mine? A. Not to my knowledge.

Q. Are you a civil engineer, Mr. Shea? A. No, sir.

Q. Did you personally make deductions or conclusions—— A. In conference with the Division Engineer.

Q. I mean to say those which are expressed on Lehigh Valley Railroad Company Exhibit No. 54? A. In conference with the Division Engineer.

Q. How much time was devoted to this work? A. Several days. 5762

Q. What do you mean by several, three or four, two or three, or what? A. Well, I should say probably four or five days.

Q. Devoting your entire time to it? A. Oh, I did not devote four or five days to it, because my general knowledge of the conditions did not make it necessary.

Q. How about your division engineer; how much time did he devote to it? A. I should say he devoted four or five days.

Re-Direct Examination by Mr. Boles: 5763

Q. The division engineer is your immediate assistant there in your division, isn't he? A. Yes, sir.

Q. He is your employe? A. Yes.

Q. Are the cars in which you haul anthracite special equipment just for that traffic? A. I should say two-thirds of it.

Q. They are built primarily for handling anthracite traffic? A. All open cars, yes, sir.

Q. All the new ones purchased are what character of cars; just describe them? A. The latest purchased cars? 5764

Q. Yes. A. They are a steel car, 100,000 pounds capacity.

Q. What kind of bottoms? A. They are all steel.

Q. Are they known as hopper bottom cars? A. Yes.

Q. So that the coal can be dropped right through the bottom of the car by opening the hopper? A. Yes.

Q. Do you get any return haul on movements of your anthracite cars? A. Very little; a little iron ore we utilize those cars for, but not very much.

5765 Q. About what percentage of the cars that come back from tidewater to your division carry traffic?

Mr. Machen: Of the coal cars are you speaking?

Q. Coal cars? A. Of the coal cars from tidewater returned to the Wyoming Division none of them carry any traffic.

Q. And about what per cent. of the cars that come back from the north to the Wyoming Division—that is,
5766 the coal cars that come back from the north and western points to your division, do they carry any return traffic? A. I should say less than ten per cent.

Q. Whereas your general merchandise cars are loaded freely in interline movement? A. Yes.

Q. Do you know how many collieries there are in the Wyoming Region? A. 27.

Q. No, I don't mean on the Lehigh Valley, I mean on any railroad? A. I should say in the neighborhood of between 75 and 100.

5767 Q. Could you say off hand how many of them are within a mile of the Lehigh Valley Railroad in addition to the 27 mentioned in Lehigh Valley Railroad Exhibit No. 54? A. I should say at least ten. That is not very accurate because I have never had occasion to check up particularly. I guess perhaps there are more than ten; I should say perhaps fifteen or twenty within a mile.

Q. Your rough estimate is that there are between 75 and 100 in the region and of those 27 are shown on this exhibit? A. Yes.

5768 Re-Cross-Examination by Mr. Machen:

Q. How many of these 15 or 20 collieries that are on the line of the Lehigh Valley Railroad that are within a mile of the Lehigh Valley Railroad, but not directly reached by it, are owned or controlled by other railroad companies?

Mr. Boles: Objection.

A. I could not answer that.

Q. How many of them, if any, are operated by the 5769
Philadelphia & Reading Coal & Iron Company?

Mr. Boles: Objection.

Q. They do not reach that region, do they? A. Not one.

Q. Are any of them collieries of the Delaware & Hudson Company? A. Yes, some of them are collieries of the Delaware & Hudson Company.

Q. How many of them are collieries of the Delaware & Hudson? A. As I understand, I just estimate, 18 or 5770
20.

Q. You know a number of them are collieries of the Delaware & Hudson? A. I know some of them are collieries of the Delaware & Hudson.

Q. How many of them are collieries of the Delaware Lackawanna & Western? A. Some of them are collieries of the Delaware, Lackawanna & Western.

Q. Are any of them collieries of the Pennsylvania Coal Company? A. I don't think there is a colliery of the Pennsylvania Coal Company within a mile of our 5771
tracks.

Q. Are any of them collieries of the Hillside Coal Company? A. Yes, at about a mile.

Q. Are any of them collieries of the Susquehanna Coal Company? A. I don't know the distinction between the Hillside and the Susquehanna.

Q. Are any of them collieries of the Lehigh & Wilkes-Barre Coal Company? A. Yes.

By Mr. Warren:

Q. Mr. Shea, have you ever classified the Bernice 5772
Region coal as bituminous in your mind or anywhere else? A. No, sir.

Q. Did you ever hear of it being called bituminous coal up in that country? A. I don't think I ever have.

Q. You have heard it spoken of as semi-anthracite I suppose? A. Yes.

Q. Don't you know as a matter of fact that the Bureau of Mines in charge of the anthracite region and Sullivan County, classify the Bernice coal as well as that in Lu-

5773 zerne and adjoining counties as anthracite coal? A. I haven't any personal knowledge of that.

Q. You don't know whether the mine inspectors cover that territory? A. I do not, no, sir.

By Mr. Machen:

Q. Are any of these fifteen or twenty collieries that you have referred to collieries owned or operated by the Scranton Coal Company? A. I don't know the Scranton Coal Company.

5774 Mr. Boles: I offer in evidence Lehigh Valley Railroad Exhibit marked No. 54 for identification.

Marked **Lehigh Valley Railroad Company Exhibit No. 54.**

William T. Grier, recalled, on behalf of the Lehigh Valley Railroad Company.

Direct Examination by Mr. Boles:

5775 Q. Mr. Grier, did you prepare a pamphlet entitled "History of Lehigh Valley Railroad Company's Anthracite coal rates, dated October 23, 1913," for use in the Interstate Commerce Commission Investigation, known as I. C. C. Docket No. 4,914? A. Yes.

Q. Is that it? (Showing witness papers.) A. Yes, sir.

Q. Is it correct? A. It is.

Mr. Boles: I offer it in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 79.**

5776 Mr. Boles: I offer in evidence copy of Lehigh Valley Railroad Company I. C. C. tariff D.-338;

Also tariff of Lehigh Valley Railroad Company I. C. C. D.-339.

Also tariff of Lehigh Valley Railroad Company I. C. C.-D.-562, as one exhibit.

Marked **Lehigh Valley Railroad Company Exhibit No. 80.**

Q. Mr. Grier, have you prepared a list of local anthracite coal tariffs issued by the Lehigh Valley Railroad

Company and now in effect making rates from collieries, 5777
washeries and stations in the Lehigh, Schuylkill and Wyoming regions on the Lehigh Valley Railroad showing the Interstate Commerce Commission number of each tariff, the effective date thereof and the point to which applicable? A. I have.

Q. Is this the list? (Showing witness paper.) A. Yes, sir.

Q. Is it correct? A. It is.

Mr. Boles: I offer it in evidence.

Marked **Lehigh Valley Railroad Company Exhibit 81.** 5778

Q. I show you a list of joint anthracite coal tariffs issued by the Lehigh Valley Railroad and now in effect making rates from collieries, washeries and stations in the Lehigh, Schuylkill and Wyoming regions, showing the Interstate Commerce Commission numbers, the effective dates, the points to which applicable and the railroads in connection with which the tariffs are issued; was this list prepared by you? A. Yes, sir. 5779

Q. Is it correct? A. It is.

Mr. Boles: I offer it in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 82.**

Q. I show you a list entitled, "General anthracite coal tariffs issued by other roads making rates from points on the Lehigh Valley Railroad to points on connecting lines, showing the Interstate Commerce Commission number, the effective dates, the other railroads by which 5780
issued and from what points to what points," did you prepare that list? A. Yes, sir.

Q. Is it correct? A. It is.

Mr. Boles: I offer it in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 83.**

Q. Who operates the William A. Colliery shown thereon? A. Lehigh Valley Coal Company.

5781 Q. Who operates the Miners Mills Colliery, shown on Exhibit No. 83? A. The Miners Mills Coal Company I understand.

Q. I show you a list entitled, "List of joint anthracite coal tariffs issued by the Lehigh Valley Railroad and now in effect, making rates from collieries and stations in the Bernice region, showing the Interstate Commerce Commission numbers, the effective dates, the railroads to points on which the tariffs apply, and by what railroads issued"; was that list prepared by you? A. Yes, sir.

5782 Q. Is it correct? A. It is correct.

Mr. Boles: I offer it in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 84.**

Q. I show you a list of local anthracite coal tariffs issued by the Lehigh Valley Railroad and now in effect, making rates from collieries and stations in the Bernice region; was that list prepared by you? A. Yes, sir.

5783 Q. Is it correct? A. It is.

Mr. Boles: I offer it in evidence.

Marked **Lehigh Valley Railroad Company Exhibit No. 85.**

Q. Do you make the rates on anthracite coal on the Lehigh Valley Railroad? A. Yes, sir.

Q. Do you make those rates absolutely without any reference to stock ownership of the Lehigh Valley Coal Company by the Lehigh Valley Railroad? A. Absolutely without any consideration.

5784 Q. Do you know whether the Lehigh Valley Railroad Company owns the stock of the Lehigh Valley Coal Company? A. Not of my own knowledge, no, sir.

Q. Do you know whether the Lehigh Valley Railroad Company owns any stock of Coxe Brothers & Company? A. No, sir, I do not.

Q. Do you make your rates without any reference to any relation of stock ownership between the Lehigh Valley Railroad and Coxe Brothers & Company? A. Yes, absolutely.

Q. Why is it impracticable to transport anthracite coal 5785
by canals? A. My experience has been only with the Morris Canal, and the impracticability is the slow time and, so far as the Morris Canal is concerned, the physical conditions are such that it is impossible to transport any quantity of coal at all through that channel. The market requires prompt delivery and as it is constructed now it requires a transfer of coal at Port Delaware from cars to boats, causing more or less degradation. Then, deliveries at destination are such that the canal could make very few compared to what railroads can. 5786

Q. What about winter conditions? A. Of course, during the winter in severe weather the canal is closed and it is impossible to transport any coal over it.

Q. Closed why? A. Because of the ice. The freezing of the water, if there is any left in the canal—they run it out usually.

Q. Is the rehandling of coal at points of transshipment a large item in the expense of transportation? A. Yes.

Q. Do you know the extent to which the Mid Valley Coal Company ships anthracite westbound? A. I don't know the extent, but they do ship more or less coal in 5787
that direction.

Q. Are you influenced in any way by the Lehigh Valley Coal Sales Company in making or fixing your anthracite rates? A. No, sir, no way at all.

Q. Never have been? A. No, sir.

Q. Have you been hindered in making your rates by the Lehigh Valley Coal Sales Company or the Lehigh Valley Coal Company? A. No, sir.

Q. And have you been prevented from freely fixing rates by the Lehigh Valley Coal Company or the Lehigh 5788
Valley Coal Sales Company? A. No, sir; they could not do it.

Q. Do you fix your anthracite rates to all points on the Lehigh Valley and your division of joint rates applying to points off the Lehigh Valley according to recognized and legitimate standards—quoting the petition in this case? A. Yes, sir.

Q. Do you consider any factor which is not or may not be considered consistently with the rights of the public? A. No, sir.

5789 Q. Or do you consider any factor which necessarily tends to keep anthracite rates unduly high? A. No, sir.

Direct Examination by Mr. Warren:

Q. Mr. Grier, what quantity, what tonnage of coal, anthracite coal, do you carry—if you are willing to estimate it for me—from the Bernice region over the rails of the Lehigh Valley Railroad Company? A. For the fiscal year ending June 30th, 1914, we carried 529,000 tons.

5790 Q. I call your attention to the last published annual report of the Department of Mines of Pennsylvania for the year 1912, part one, anthracite——

Mr. Machen: Do you vouch for that book, Major?

Mr. Warren: Certainly I vouch for it, as an Official Report of the Department of Mines, if that is what you mean.

Q. I call your attention to page 641—do you not find
5791 there noted as to the 21st district in the counties of Lackawanna, Sullivan, Susquehanna and Wayne County? A. Yes.

Q. And isn't that the start, at the head of the report of the inspector of mines of the 21st anthracite district? A. Yes, sir.

Q. And on page 643 do you not find among the operators, Table A, Production of coal, Connell Anthracite Mining Company—this is for the year 1912, you understand—247,795 tons? A. Yes.

Q. For the Northern Anthracite Coal Company, 201,-
5792 477 tons? A. Yes, sir.

Q. And for the O'Boyle-Foy Anthracite Coal Company, 121,037 tons? A. Yes, sir.

Q. In the lines of operators, the Hillside Coal & Iron Company and other recognized anthracite operators? A. Yes.

Q. Now, do you know whether your railroad serves those three collieries alone; that is to say, whether it is the only railroad that has the rails and the spur lines and

the branch tracks into the chutes and collieries? A. Yes, they are on our tracks. 5793

Q. Is there any other railroad serving those operations? A. No, sir.

Q. Do you know the direction in which that coal moves over the rails of the Lehigh Valley Railroad Company? A. Yes.

Q. Tell us please? A. New York State, Canada and Northern New England.

Q. What proportion, if you can assume it, of that tonnage goes to Buffalo? A. For local delivery or for movement beyond it? 5794

Q. First for local delivery? A. I don't know the proportion, but there is a very large tonnage that goes to Buffalo locally and also to Suspension Bridge for points in Canada.

Q. When you are speaking of shipments to Buffalo over your rails, do you include shipments which do not actually go into the City of Buffalo, but go to Suspension Bridge for transshipment? A. By rail, yes, sir.

Q. Did you ever participate in any classification of this Bernice coal as bituminous? A. No, sir. 5795

Q. Did you ever hear it called bituminous except by the Government counsel? A. No. The only relation in which it was spoken of in connection with the bituminous coal is the reports of revenues issued by our accounting department, which usually specifies the Bernice coal as Loyalsock.

Q. Is this the Loyalsock coal so-called? A. Yes, sir.

Q. So that even in the accounting department of the railroad it is not classified as bituminous? A. Not to my knowledge, no, sir. 5796

Cross-Examination by Mr. Machen:

Q. Is the Bernice coal for rate making purposes classified in prepared sizes? A. Yes, and Pea and Buckwheat.

Q. What is the rate from the Bernice region to Perth Amboy for transshipment by water? A. I don't think they ship any that way at all. The character of the coal is such that it would not stand the rehandling the same way that the harder coal will.

5797 Q. What is the rate to Buffalo? A. My recollection is $1.50 a gross ton.

Q. Is that the local Buffalo rate? A. Yes.

Q. What is the rate to Buffalo or Suspension Bridge for transshipment? A. $1.75 per gross ton.

Q. None goes beyond Buffalo? A. Not by water, no, sir.

Q. How about to Suspension Bridge? A. The rail rate is the same, $1.50 a gross ton.

Q. For prepared sizes? A. Yes.

5798 Q. Are there any prepared? A. Oh, yes.

Q. What is the rate on anthracite coal from Wyoming or from any point east of the region to Buffalo? A. $2.00 a gross ton.

Q. That is on prepared sizes? A. Yes, sir.

Q. For what purpose is the Bernice coal used? A. Bernice coal is used for domestic purposes; the screenings are used in some manufacturing operations with bituminous for the generation of steam.

Q. Do you know what price it commands? A. I think the price—I am not probably competent to give an accu-
5799 rate statement, but my understanding is that the coal sells prepared sizes at the rate of about $1.00 a ton less than anthracite from the Lehigh or Wyoming regions.

Q. Referring to this report of the Department of Mines which Major Warren has shown, it gives, does it not, the production for the calendar year 1912 of each colliery, and includes in the 21st district the three companies operating in the Bernice region? A. Yes.

Q. Looking at this index, can you tell whether any one of these three companies mentioned operates in any
5800 other district than the 21st? A. It is all shown on page 643.

Q. Does it disclose where any of those companies operate? A. Yes.

Q. Looking at the report of the Lehigh Valley Railroad Company to the Interstate Commerce Commission for the year ending June 30th, 1913, won't you state whether or not the Bernice Coal is included under bituminous? A. It does not say so specifically, but that inference can be drawn from the heading which says

"Freight originating on this road." Now, there is no 5801
bituminous coal which originates on the Lehigh Valley Railroad, but that shown by the item opposite "bituminous coal," 64,252, is probably Bernice, but my tariffs applying on this commodity all specify "Anthracite coal, Bernice region," and I don't know why the accounting department saw fit to render the report that way.

Mr. Warren: Isn't this report made on a printed form which the Government furnishes?

The Witness: I don't know. 5802

Mr. Machen: I will admit that.

Mr. Warren: And they make no differentiation between the anthracite known as anthracite and semi-anthracite, do they, on this page?

The Witness: No, sir.

Mr. Warren: And so it may be as it had not been classified as anthracite strictly it was put in under the head of bituminous coal here because it could not go anywhere else?

The Witness: That is possible. 5803

Q. This same report of the Department of Mines gives the production for each colliery in the anthracite region, Lehigh, Wyoming and Schuylkill regions, with the name of the operator? A. Yes.

NOTE: The report of the Department of Mines for 1912 out of which the witness was asked to read the operations of the three designated companies in the Bernice region is headed "Part one, anthracite," and it has no relation to the volume 5804
which contains the production in the bituminous region of Pennsylvania.

Q. You have given us lists of tariffs effective upon the Lehigh Valley Railroad; you have not, however, given us any list of tariffs on anthracite coal applying from collieries on other railroads to points on the Lehigh Valley? A. There is only one such tariff included in that list. I think it is shown there. That is the

5805 tariff making a rate from the Red Ash Colliery on the Central Railroad of New Jersey.

Q. I don't think that is on this list unless the heading is wrong. A. The last item on page two of Exhibit No. 82 covers Red Ash and also covers collieries on the Lehigh and New England Railroad.

Q. The only such tariff in existence is the Lehigh Valley tariff D.-508, is that correct? A. That is the only such tariff which the Lehigh Valley Railroad issues.

Q. Is there any issued by any other railroad? A. I
5806 think there are.

Q. Which ones? A. I think the Central Railroad of New Jersey have several. I can make sure of that; I am not positive of it now.

Q. I wish you would make sure of it? A. I will.

Q. Wasn't this tariff I. C. C.-D.-508 established in consequence of a direction from the Interstate Commerce Commission? A. No, sir.

Q. Wasn't application made to the Interstate Commerce Commission to require the establishment of that joint rate? A. The application was made by the Red
5807 Ash Coal Company, or a complaint was made by the Red Ash Coal Company, to the Interstate Commerce Commission, asking certain rates, some of which we refused to grant and others we did, and the Lehigh & New England Railroad rate from collieries on their line was put in by us without any communications pro or con with the Interstate Commerce Commission.

Q. That is the rate with the Lehigh Coal & Navigation Company? A. Lehigh & New England Railroad. The Lehigh Coal & Navigation Company is the only
5808 shipper on that road.

Q. You say that you have absolute control over the making of anthracite rates? A. Yes; so far as the jurisdiction of a traffic officer of a railroad goes.

Q. Do you ever consult with any other officer of the railroad with reference to making rates? A. If there is any doubt in my mind I certainly would.

Q. You would consult with the President on an important matter? A. Not necessarily; it might be the vice-president or Mr. Blood, the traffic manager.

Q. Have you ever without consulting the president made an application to the Interstate Commerce Commission to permit you to increase a rate or rates? A. Yes. 5809

Q. When? A. Why, it is included in that five per cent. advance.

Q. You did that on your own hook without consulting the President? A. Yes, and I told him what I did and he approved my action.

Q. And he had no knowledge it was going to be done beforehand? A. No.

Q. It was a great surprise to him? A. I don't know that it was a great surprise to him. All the railroads were endeavoring to get advances in rates and I didn't see any reason why anthracite coal should be left out of it. 5810

Q. Have you ever reduced the rate without consulting the President? A. I have not reduced any rate in recent years, except in some isolated cases in New York State where there have been some changes.

Q. Mr. Thomas testified as follows in 1908 in the case of the United States against the Reading Company: "Who fixes now over the Lehigh Valley Railroad the rate on coal? A. The traffic manager. 5811

"Q. Is he at liberty to change them? A. He is at liberty to do it, but I doubt whether he would do it without consultation because it is an important matter." Is that correct? A. I am not in a position to criticise Mr. Thomas' statements, and say whether it was correct or not.

Q. You can say whether it was true or not? A. I have already said I made changes without consulting with him. 5812

Mr. Boles: Mr. Thomas says, "I doubt."

Re-Direct Examination by Mr. Boles:

Q. Mr. Grier, who is your immediate superior officer? A. My immediate superior officer is the freight traffic manager.

Q. Who is he? A. C. A. Blood.

Q. And who is his superior officer? A. T. N. Jarvis, vice-president.

5813 NOTE: It is by agreement of counsel understood that the counsel for the Government shall have an opportunity, if he so desires, at any time before the close of the defendants' case to further cross-examine Mr. Grier in connection with the exhibit filed as Lehigh Valley Railroad Exhibit No. 79.

Mr. Boles: The agreement in this case is the same as in the case of Mr. Wilgus, being made with the understanding that it is not in any way to affect the final closing of the whole case on or
5814 before August 7th.

Q. Are there a large number of districts on the line of the Lehigh Valley using bituminous coal and coke for manufacturing purposes? A. Yes.

Q. And are there a large number that use anthracite coal for manufacturing purposes? A. Yes.

Q. Does the Bethlehem Steel Company use a large amount of anthracite coal for manufacturing purposes? A. Yes.

Q. Any other concerns? A. Raritan Copper Company
5815 and American Smelting & Refining Company both use very large quantities; also the Standard Oil.

Q. Where are they located? A. At Constable Hook. They take about 250,000 to 300,000 tons a year of steam sizes.

Q. Where is the Standard Oil? A. Constable Hook.

Q. And the Raritan Copper Company? A. Perth Amboy.

Q. American Smelting & Refining Company? A. At Perth Amboy.

5816 Q. Is the tonnage large? A. The tonnage is large, yes, sir.

Q. What other industries can you name? A. That use bituminous coal?

Q. Anthracite. A. There are a number along the Lehigh Valley; some of the cement plants use the anthracite coal also.

Q. Whitehall Cement Co.? A. Whitehall Portland Cement Company in Pennsylvania use a considerable quantity; the Coplay Cement Company and a number of cement plants on the Ironton Railroad.

Q. What about traffic to Geneva? A. That is bituminous. A very large tonnage to Geneva, New York, to the Empire Coke Company. 5817

Q. Do you use equal efforts to develop that bituminous tonnage to these manufacturing points along the line of the Lehigh Valley Railroad? A. Yes, we do.

Q. And do you use considerable effort to develop anthracite traffic to these manufacturing plants? A. Yes.

Q. Are rates made to-day on a percentage basis to any point you know of on the Lehigh Valley Railroad? A. No, sir. 5818

Q. Why? A. It would be impossible to make effective percentage rates to New York Harbor as they were made years ago. In the first place you must print your rates and file them thirty days before they can become effective. Under the old percentage system the traffic could begin thirty days before the rate would be made effective.

Q. How long has it been true that you have had to establish your rate by filing your tariff thirty days in advance of the effective date of the rate? A. Since the Hepburn Act was made effective in August, 1906.

Q. And since that date you have never published any 5819 percentage rates? A. No, sir.

Q. And how long prior to that time had you not published percentage rates? A. We never published percentage rates. We charged percentage rates up to November 1900, and since that time the tariff rates as published were used.

Direct Examination by Mr. Warren:

Q. Mr. Grier, has not the Lehigh Valley Coal Sales Company and yourself had differences upon the question 5820 of freight rates affecting certain points since the organization? A. Yes, we have had such differences.

Q. What claims have they made upon you in the matter of adjustment of freight rates, or changes in freight rates, and what have you done with them? A. We contemplated advancing the rate to Chicago from $3.50 per gross ton to $3.75 per gross ton, and they objected very strongly to it, made representations to me that if the rate was advanced they would not be able to meet the

5821 competition of bituminous coal and gas. We advanced the rates, but they were suspended by the Interstate Commerce Commission. They also were after me to make some reduction in the anthracite coal rates to points on the New York Central east of Utica. We declined to meet their full wishes in that respect. They were also after us for a rate of $3.50 per gross ton to Chicago via Buffalo, Nickel Plate Line, Cleveland and Pennsylvania Railroad. We were disposed to meet their wishes in that respect, but the Pennsylvania Railroad
5822 refused to become a concurring carrier in any such tariff as we might issue, notwithstanding the fact that we were willing to allow them their local rate from Buffalo to Chicago out of the through rate.

Q. Will you tell me what officer of the Pennsylvania Railroad it was who declined and how you ascertained the fact that the Pennsylvania Railroad did decline? A. The coal traffic manager in charge of the western lines was the first one to object to it, and then it was objected to by the coal traffic manager in Philadelphia of the Pennsylvania Railroad.

5823 Q. What was the claim of the Lehigh Valley Coal Sales Company put up to you for a change in rates of which you have spoken as to New York Central points, I think you said Utica and vicinity? A. Points east of Utica. Well, they claimed there that if we made certain reductions in rates they would be in position to secure considerable tonnage, and I made reply to them that we did not feel disposed to make any reduction in our anthracite coal rates as we felt they were low enough, and we were in doubt as to what attitude the Interstate Com-
5824 merce Commission contemplated taking regarding the general questions of anthracite coal rates.

Q. You refused their demand then? A. Refused their demand at Chicago and for some of the points east of Utica. For a few points that were intermediate to Fonda, New York, where it was proper and consistent, and where under the law we would probably have had to do it anyhow, we readjusted the tariff.

Q. Well, apparently then you are not disposed to yield to the demands of the Sales Company in the mat-

ter of attempted reductions in freight rates anywhere 5825
on your system? A. Not unless it is in the interest of the Lehigh Valley Railroad.

Q. Do you know whether the matter of their attempt to secure this freight rate—if I have the right impression—that would give them the Pennsylvania Railroad as a carrier into Chicago, whether that is still pending? A. Yes, sir.

Q. And have they not insisted that that rate is a rate which they ought to have, a joint rate? A. Yes.

Q. To enable them to get deliveries in Chicago at 5826
certain yards and storage plants that are more accessible by the Pennsylvania Railroad? A. Yes.

Q. And your answer to that is that the Pennsylvania Railroad refused to make the joint rate? A. Yes.

Q. When was it that you started to increase the rate to Chicago to $3.75? A. That was about two or three months ago.

Q. And did you succeed in getting it into effect? A. No, sir.

Q. You published it, did you? A. Yes.

Q. And the Sales Company objected to it? A. Yes. 5827

Q. And thereafter the I. C. C. suspended it, or prohibited it, whatever the term is? A. They suspended the tariff.

Mr. Machen: What tariff is this?

The Witness: The tariff making a rate of $3.75 to Chicago.

Cross-Examination by Mr. Machen:

Q. On what ground did they object to it? A. They 5828
did not state any ground; they simply suspended the tariff.

Mr. Gordon: I offer in evidence under the reservation made by the Government on the closing of its case, a statement prepared from the tariffs of the Lehigh Valley Railroad Company as filed with the Interstate Commerce Commission and verified by Mr. Grier showing the freight rates on anthracite coal via Lehigh Valley Rail-

5829 road from the anthracite producing regions of Pennsylvania to coal storage plants in which the coal transferred by the Lehigh Valley Coal Company to the Lehigh Valley Coal Sales Company under the contract of March 1st, 1912, was stored.

Marked **Government Exhibit No. 130.**

Q. Is it correct, Mr. Grier? A. It contains water rates to Chicago and Milwaukee, to points of delivery that are reached only by water. March, 1912, the Lehigh
5830 Valley Railroad did not publish any rates from Buffalo via the Lehigh Valley Transportation Company to those points, that is, to Chicago, Milwaukee and Duluth. The figures as used here in connection with the stated rail and water rates are made up by a combination of the F. O. B. rate to Buffalo, plus the present existing water rates from Buffalo to the points mentioned.

Q. The then existing rates? A. No, sir, they were not in it at that time as far as we were concerned. We had not published any tariffs, and as I talked with Mr. Gordon I thought it was no more than fair to assume that
5831 the water rates of March, 1912, were about the same as they are at the present time.

Q. Do you know from your general knowledge of the business whether the water rates to-day are the same as they were in 1912? A. I don't know from general knowledge, but I have not heard of any material changes excepting five cents reduction to Chicago. That is, the rate this season in the Lehigh Valley Transportation boats from Buffalo to Chicago is five cents per ton lower than it was in 1913.

5832

By Mr. Machen:

Q. And the rates shown on that table are the rates for the present year? A. That is the idea.

Q. The water rates? A. Yes.

By Mr. Gordon:

Q. Who would know the water rates; who would be able to testify as to the water rates in 1912? A. You would have to probably get some of these boat brokers at Buffalo or boat line people.

Q. Wouldn't your Lehigh Valley Transportation Com- 5833
pany? A. The Lehigh Valley Transportation Company carried some coal and I suppose they would be in a position to tell you what rates were charged.

Q. Who is the rate making authority in the Lehigh Valley Transportation Company? A. I make the rates now under tariff regulations, but prior to that time I don't know who did make them. I think probably it was Captain Rogers, the superintendent, but I am of the impression that Mr. Dousman's office or Mr. Morrison's office will have a record of the rates charged for 5834
coal carried at that time.

Q. Mr. Dousman who testified the other day? A. Yes.

Q. Is his office in this city? A. No, Philadelphia.

By Mr. Warren:

Q. Regarding this Government Exhibit No. 130, did I understand you to say that that is a correct statement or, in other words, if you have verified it, as to the rates that were in effect prior to March 1st, 1912, and for a period of say a year or two to each of the points that reference is made to in this exhibit? A. No, sir. 5835

Q. Well, the exhibit, the Government counsel says in offering it, purports to show the rate of freight to certain locations, storage plants of the Lehigh Valley Coal Company prior to March 1st, 1912, and is to be used apparently in an effort on the part of the Government to show that the prices made for this stock by the Lehigh Valley Coal Company with the Lehigh Valley Coal Sales Company under its contract of March 1st, 1912, as to some of the sizes of coal so stored was less than the freight rates which are stated seriatim in that exhibit. 5836
Would you be able to say from that exhibit or would anybody be able to say from it as to what the rates were on each of the designated sizes of coal appearing on the exhibit during the time when that coal was placed in the storage plant by the Lehigh Valley Coal Company without knowing the dates of their depositing that coal which, of course, covers an indefinite period? A. No, sir. I don't think anyone could tell that.

Q. And is it not a fact that the coal stored at those points within your knowledge represents as to at least

5837 some of it as of March 1st, 1912, coal that had been deposited there for a considerable period of time running into several months at any rate, if not years? A. It must have been if there was any coal there at all.

By Mr. Gordon:

Q. Mr. Grier, does not coal deteriorate after it has been mined and prepared if it is kept long in storage? A. Through the effect of the elements?

Q. Through the effect of the elements. A. Why, I
5838 think it is a negligible factor.

Mr. Warren: I object to that question and answer of the witness because he is not shown to be qualified to express that opinion.

Q. From your knowledge as general coal freight agent of the Lehigh Valley Railroad Company do you know whether the rates of freight given were substantially the rates to the points designated which had prevailed for a year prior to March 1st, 1912? A. Not as to all of
5839 them. There are some of them here that are precisely the same for the year prior to March 1st, 1912, but as to some of the others I could not say without looking into the tariff records of the other roads.

Q. As to the tariff records on your own road could you answer? A. Yes.

Q. And I say substantially the same? A. The freight rates are substantially the same.

Q. And were for a year prior to March 30th, 1912? A. Yes.

Q. Would that be true for two years prior to March
5840 1st, 1912? A. I would not like to say that.

Q. Aren't your anthracite coal storage plants—is not the supply coal stored there during the summer very nearly exhausted by the demands of the winter season next year?

Mr. Warren: I object to any statement of the witness' knowledge of the rehandling of stocked coal at the storage plants.

A. I do not handle any reports made as to the ton- 5841
nage shipped in or shipped out of the storage plants. That is a matter that is regulated by the accounting department.

Q. Don't you know as general coal freight agent for many years for the Lehigh Valley Railroad what the general methods of carrying on the coal business are? A. I surely do.

Q. From your general knowledge, which must be very great under those circumstances, could not you state what the conduct of the business, whether or not it was 5842
the practice to store coal there in the summer and then take it out in the winter time?

Mr. Warren: I object to that question because whatever the practice was it does not at all follow that as to this coal purchased March 1st all of it had been stored the previous summer and was taken up the following winter, and inasmuch as the sale was effective at the last day of February it is certainly immaterial anyway.

5843

A. I have known of coal, Mr. Gordon, and it has been reported to me there was coal that remained in stock at South Plainfield as long as four years, and my understanding is that some years they might clean up and some years they might not clean up.

Q. Has the anthracite coal rate to South Plainfield altered in the last ten years? A. The local rate to South Plainfield has not altered in the last ten years but a rate that was charged on account for the coal that went into stock at South Plainfield has changed.

Q. How much has it changed? A. Well, in the begin- 5844
ning, or a number of years ago, my recollection is that the rate charged on coal going into stock at South Plainfield was $1.00 and subsequently it was changed—that is, on prepared sizes—and subsequently it was changed to a basis of 55 cents per ton less than the local tariff rate to that point, and about a year and a half or two years ago it was changed to the full local rate to the stocking point.

5845 Q. In the earlier days was there any charge for the picking up of that coal again and forwarding it to the market? A. We had nothing to do with that; that was done by the shipper.

Q. But the coal rate to the stocking point did not include a privilege of forwarding the coal on again as though it had been originally shipped by through route from the original point of origin to the market of destination? A. Oh, yes, that is what the proportional rate was made for.

5846 Q. You mean that if the coal was shipped to South Plainfield and stored at South Plainfield for that 55 cent lower rate and then subsequently shipped on to New York to the market in the winter time that it would finally have arrived at the market at a rate the same as though it had originally been shipped straight to New York? A. Yes.

Q. Without regard to the length of time it remained in storage? A. Yes, indefinitely.

Q. If that coal which was shipped to South Plainfield was subsequently taken out of storage and sold at South
5847 Plainfield would there have been any additional payment to the railroad? A. Yes, we would charge the local rate.

Q. So that by the time it go to market at South Plainfield it would have paid the local rate to South Plainfield? A. Yes.

Q. So that the 55 cent lower rate which they paid was ultimately paid back to the Railroad when the coal was marketed? A. Yes.

Q. And the market rate so to speak was the same
5848 whether the coal was stored or whether it was not? A. Yes, so far as the rate of transportation was concerned the stocking of the coal had no effect on it whatever; the rate applicable on it from the point of origin to the point to which it was finally consigned applied in accordance with the tariff filed.

Q. Suppose coal had been shipped in 1908 to South Plainfield at the rate you described and then in 1912 shipped on to New York what rate would apply? A. The rate that was in effect in 1912 from the mine to destination.

Q. So if any coal had been in storage in South Plain- 5849
field for the last four years when it was taken out of storage the rate which would apply to that coal would have been the then existing rate? A. The current rate when it was moved out of stock. That is true, until we had our present arrangements put into effect under an order of the Commission, or an opinion of the Commission, by which we must charge on coal when it comes out of the stocking plant the rate that was in effect, when the coal left the mine, to the ultimate destination. That cannot physically be done and the Commission has per- 5850
mitted a tonnage balance to settle the account.

Q. That was the arrangement, however, on March 1st, 1912? A. I don't know just the exact date we put that arrangement into effect; we have the tariff that shows it.

Q. You could find that out? A. Oh, yes.

Q. Was that method of rate making which you describe as applying to the storage of coal at South Plainfield applicable to stored coal at other storage points? A. On the Lehigh Valley Railroad, yes.

Q. Specifically those named in the table which I have 5851
shown you? A. Not all of them.

Q. Not all of them are on the Lehigh Valley? A. Yes, and not all of these that are on the Lehigh Valley. That arrangement applied only to Wende, Ransom, Hudsondale and South Plainfield.

Q. As to the other storage plants which you have not named the local rate applied? A. Yes.

Q. As existing on the date of shipment? A. Yes.

By Mr. Warren: 5852

Q. Mr. Grier, you don't know, of course, when the Lehigh Valley Coal Sales Company took up the coal that they purchased as of March 1st, 1912, at certain storage and stocking plants, rehandled it, and either sold it at the place where the storage plant was located or forwarded it to destination elsewhere? A. No, sir.

Q. So that that table which the Government has offered this afternoon would throw no light upon the question of the applicability of the rates on all these

5853 sizes of coal which were at this storage point as of March 1st, 1912, in the matter of determining the cost of that coal, being sent to the ultimate customer or consumer? A. No, I don't think it would.

Q. Or to the Lehigh Valley Coal Sales Company or the Lehigh Valley Coal Company either. In other words, if the Lehigh Valley Coal Company had not sold that coal and had taken it up at different times since 1912 up to, we will say, to-day, it certainly would not apply, would it? A. No, sir.

5854 Q. If, on the other hand, the Lehigh Valley Coal Sales Company, having purchased that coal as of March 1st, 1912, rehandled it, took it up, in other words, and sold, we will say a certain part of it at South Plainfield, as to that which was stored at South Plainfield and a certain part forwarded there is no light would be thrown on the question of the applicability of that rate to the price paid for certain sizes of that coal? A. I don't think so.

Q. In other words, the exhibit is of no value whatever in determining whether if you undertook to apply those

5855 figures which purport to be the rate upon anthracite coal as of certain sizes to a price paid for all the coal irrespective of sizes in determining whether it was more or less?

Mr. Machen: I object to the leading questions propounded to his own witness by counsel for the Coal Sales Company.

Mr. Warren: I object to the leading questions propounded by the Government in questioning this witness to support the witness, and ask that

5856 that all be stricken out if the counsel for the Government now insists upon a very technical objection to a leading question.

By Mr. Gordon:

Q. Was that present practice which you have described made retroactive which was in effect at the time the coal was originally shipped to the storage plant, made retroactive as to coal already stored at the time of the filing of this new tariff?

Mr. Warren: I object to the question as leading. 5857

A. No, it was not made retroactive. It was applied strictly from the date the tariff became effective, and any coal in stock at that time was permitted to remain there two years more and the rate that was applied upon it from that time was arrived at by taking as a balance the tonnage that came out as against tonnage that went in. Two years was the limit of the coal in stock.

Q. Do you know of your knowledge of the coal industry that the year 1912 was a great strike year? A. They had a strike in 1912, yes. 5858

Q. There was a suspension of shipments for a long time? A. About a month and a half.

Q. And almost a coal famine was the result of it, wasn't it? A. No, I don't think there was a coal famine.

Q. The prices of coal raised very rapidly and very high? A. They raised, but I don't think they went very high.

Q. Was or was not the existing supply almost exhausted before the strike was over? A. I don't think I can testify as to the stock of coal that was on hand at the time the strike was declared off, but my recollection is that there wasn't any such abnormal conditions, and my further recollection is that there was no advance in price of coal during the 1912 strike by the larger companies. 5859

By Mr. Warren:

Q. You said, or at least I understood you to say, that there was no advance in the price in 1912; don't you remember that in view of the suspension of that year that the ordinary reduction of ten cents a ton, I think it was, on the circular prices for the first two or three months of that year—perhaps all of that summer—was not given; in other words, they charged the full circular price? A. They usually make a reduction of fifty cents, I believe, per ton; that reduction was not made, but I did not look upon that so much as an advance. 5860

Q. Don't you also remember that that same summer they advanced the price of coal 25 cents a ton as to pre-

5861 pared sizes, I mean now? A. They advanced the price 25 cents a ton, yes, but I don't know whether you want me——

Q. As the counsel for the Government has gone into an excursion on prices with you, I thought I would follow with you; you have nothing to do with prices? A. No. I simply have my knowledge of the situation as acquired by association.

Q. Of course, the 1903 demand followed the strike of nearly six months? A. Yes.

5862 Q. The 1912 demand for coal followed a suspension of about six weeks, did it not? A. Yes.

Hearing adjourned to Friday, July 24, 1914, at ten o'clock A. M.

5863

5864

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA, Petitioner, AGAINST LEHIGH VALLEY RAILROAD COMPANY, *et al.* Defendants.	Before B. W. B. Brown, Esq. Special Examiner.

New York, July 24th, 1914.

Hearing resumed pursuant to adjournment.

APPEARANCES SAME AS BEFORE.

Clarence A. Blood, a witness called in behalf of the Lehigh Valley Railroad Company, being first duly sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. What is your position? A. Freight Traffic Manager.

Q. Of the Lehigh Valley Railroad? A. Yes, sir.

Q. As such, over what traffic do you have jurisdiction? A. I have jurisdiction over merchandise freight and milk, coal, and, in fact all traffic other than passenger.

Q. All the traffic of the road other than passenger? A. Other than passenger and express. Express really does not come under me.

Q. What is the policy of the Lehigh Valley Railroad Company in respect to the development of its merchandise traffic, that is its merchandise and bituminous traffic, in other words, any traffic outside of anthracite? A. They use every opportunity to develop all the traffic we can get, both merchandise freight, and bituminous coal, and get it in our traffic.

5869 Q. Will you state in a general way how your department is divided in respect of the distribution of work? A. The department under me consists of an assistant freight traffic manager, Mr. Burnett, and in my absence he is in general charge of the office, but his special work lies on rate work, conferences, and other work with the Interstate Commerce and State Commissions, any cases which may arise and general work of that nature. We have next a general freight agent, Mr. Woulfe, whose entire time is spent in general direction or solicitation of
5870 freight, merchandise freight other than coal and coke. We have an assistant general freight agent, Mr. Wood, who takes charge of rate work as a specialty, working under Mr. Burnett. The milk agent, Mr. Dewey, devotes his entire time to the solicitation and looking after the milk traffic, reporting to me directly, but working also direct with the transportation, legal or other departments. The general freight and coal agent, Mr. Grier, who has charge of the solicitation of the traffic in the territory from Newark to Wilkes-Barre and branches. He has charge of sidings for industries al-
5871 ready located on the road, and of the anthracite coal and coke trade. The chief of tariff bureau, Mr. Beck, who has charge of the printing and preparing of the tariffs.

Q. All tariffs? A. All tariffs, coal and merchandise freight. The through freight agent at Buffalo, who looks after the details of business, both East and Westbound. The general western freight agent, who looks after the solicitation of all business West. I think that comprises the general staff.

Q. You have an assistant general freight agent at
5872 Buffalo? A. An assistant general freight agent at Buffalo. I was going to say that comprised all the staff with the exception of those located along the line of the road outside of New York, the assistant general freight agent and the division men. Then we have offices in all the large cities East and West.

Q. You have freight solicitation offices in New York? A. Yes.

Q. Philadelphia? A. New York, Philadelphia, Buffalo, Boston.

Q. Chicago and Boston? A. Chicago and Boston. 5873

Q. St. Louis? A. St. Louis, Kansas City, Indianapolis, Cincinnati, St. Paul, Minneapolis, Cleveland, Milwaukee, Toledo, Detroit, Pittsburgh, and probably some others.

Q. Any further west? A. No direct office.

Q. Those you have mentioned are actual individual offices? A. They are actual individual offices of the Lehigh Valley, straight offices.

Q. Have you an idea off-hand how the number of general merchandise tariffs published by the railroad com- 5874
pare with the number of anthracite rate tariffs? A. No. It is very, very much larger, running up into the thousands with the merchandise freight. I don't know the number.

Q. You mean thousands of merchandise freight tariffs? A. Yes, against about two hundred in the coal. I don't know just how the numbers run.

Q. Have you ever been an officer or employe of the Lehigh Valley Coal Company or the Coxe Brothers & Company? A. No. 5875

Q. Or of any other coal company? A. No.

Q. Who is your immediate superior? A. Mr. T. N. Jarvis, vice-president.

Q. And what is Mr. Jarvis' jurisdiction as vice-president? A. Covers all that I have mentioned, as well as passenger.

Q. And industrial questions? A. And industrial questions, generally.

Q. Is there an officer in your department known as an Industrial Commissioner? A. Yes, P. H. Burnett, who devotes his entire time to that work. 5876

Q. And what is that work? A. It is the securing of the new industries along the line of the road. The Agriculturist also reports to him, doing agricultural work with the farmers along the road. General development of the work of the road, in fact.

Q. In other words, to persuade industries to locate along the line of the Lehigh Valley? A. Yes, sir, that is it.

Q. Irrespective of the character, provided they can give or receive freight? A. Exactly.

5877 Q. To what extent does Mr. Grier report to you in reference to the making or changing of its anthracite rates? A. Well, but very little.

Q. You mean because there are a very few changes, or because you give him the broad authority? A. He has the broad authority. I might explain that in this way, Mr. Boles. I don't think a man ever gets away entirely from the line of work which he grew up in. I grew up in merchandise freight. I am more familiar with that than I am with the coal or milk.

5878 Q. In other words, you have delegated the milk rate authority to Mr. Dewey, and the coal rate authority to Mr. Grier? A. Exactly.

Q. By the coal rate authority including both anthracite and bituminous? A. Yes, sir.

Q. So that you give him virtually unrestricted jurisdiction over that subject? A. He has generally, yes.

Cross-Examination by Mr. Machen:

Q. How long have you been freight traffic manager?

5879 A. Since April, 1906, if I recollect right.

Q. How long have you been connected with the Lehigh Valley Railroad? A. Thirty-six years.

Q. Have you been familiar with the merchandise freight in that time? A. Yes, more familiar with that.

Q. What has been the course of development of the merchandise freight traffic during that time? A. Oh, it has been a steady course of development throughout the entire period, I think.

Q. In volume? A. In volume, yes, sir.

5880 Q. What has been the course of development in respect of the character of merchandise traffic? Can you give us any idea as to that? A. Well, I don't think that the character has changed very much in the last ten or fifteen years. It has been an increase in the volume all the time.

Q. You mean that the proportions of different kinds of freight have—— A. (Interrupting.) That the commodities have run about the same, but to give you an idea, years ago, I will say 15 years ago, there was little or no cement shipped over the road; the cement mills

located and grew until it came to be a very large annual tonnage, as a natural development. 5881

Q. Bituminous traffic has also considerably grown in the last ten or fifteen years, hasn't it? A. I think it has, but I am not especially familiar with the bituminous figures. I should have to look that up.

Q. What can you say as to the course of development during the last ten or fifteen years of the local and general merchandise freight along the line of the Lehigh Valley Railroad in comparison with that received from connecting carriers? A. There has been some increase along the line of the road, due to natural causes. As, for instance, as I just explained about cement. There is a constant change going on. For instance, one concern, the Bethlehem Steel Company in the last three or four years, business has increased very largely, and through changes of that kind, which are natural. 5882

(WITNESS EXCUSED.)

Mr. Boles: I offer in evidence an extract from the minutes of the meeting of the Board of Directors of the Lehigh Valley Railroad Company held at the general office of the Company, 228 South Third Street, Philadelphia, August 24, 1905. 5883

Marked **Lehigh Valley Railroad Company Exhibit No. 86.**

Mr. Boles: I offer in evidence pages 1304 to 1319 both inclusive of the record in the new Reading case, record of the defendants' testimony in the new Reading case, being a general statement as to the legislative policy of the Commonwealth of Pennsylvania in respect of the relations between railroad corporations of that State and coal mining corporations of that State, part of which I personally prepared. 5884

Mr. Machen: Note an objection on behalf of the Government to the admission of this evidence, as the Acts of the Legislature of the State of Pennsylvania are the best evidence of the policy of the State, and because such evidence is irrelevant in

5885 this case. I am perfectly willing to agree that any party may refer to the printed Acts of Assembly therein mentioned, or any part thereof, with the same effect as if the original certified copies of the Acts were produced, and subject to all exceptions to which such copies would have been subject; but, of course, I cannot admit that the policy of the State of Pennsylvania is correctly stated in this Exhibit.

Marked **Lehigh Valley Railroad Company Exhibit No. 87.**

5886 Mr. Boles: I offer in evidence pamphlet which has been marked for identification as Exhibit No. 4, entitled, "The Production of Coal in 1912," being pamphlet prepared by Edward W. Parker, statistician of the United States Geological Survey, Department of the Interior, and I ask that the excerpts which I have noted on pages 3, 5, 7, 16 and 17, 19 and 20, and pages 166 to 188 both inclusive, be copied as an exhibit with leave on the part of the Government to copy in any other

5887 portions it may desire.

Received and marked **Lehigh Valley Railroad Company Exhibit No. 4.**

Mr. Boles: I offer in evidence Senate Document, Volume 40, 61st Congress, Third Session, 1910-1911, being Volume 7 of the Investigations of the Interior Department and Forestry Bureau, and ask that only the portions that I now refer to be copied as an Exhibit, with leave on the part of the Government to refer to or have copied any

5888 other portions they may desire. I ask that the following excerpts be copied as one Exhibit. The portions marked on Pages 3478 and 3479; the portions marked on pages 3482, 3483, 3484 and 3485, and pages 3488 to 3492, both inclusive, the excerpts in question being the testimony of Mr. George Otis Smith, Director of the United States Geological Survey, before a Senate Committee in respect of the soft coal lands in Alaska, and referring particularly in these pages to the anthracite

mining industry and the relation of the railroads thereto in the State of Pennsylvania, and containing an address which refers to the same subject by Mr. Edward W. Parker, Statistician of the United States Geological Survey, and a member of the anthracite coal commission appointed by the President of the United States in 1902. 5889

Mr. Machen: We object to the testimony of Mr. Smith as hearsay, and to the statement of Mr. Parker for the same reason.

Marked **Lehigh Valley Railroad Company Exhibit No. 88.** 5890

Thomas N. Jarvis, a witness called on behalf of the Lehigh Valley Railroad Company, being first duly sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. What is your position? A. Vice-President of the Lehigh Valley Railroad, in charge of traffic. 5891

Q. How long have you held that position? A. Since 1908.

Q. How long have you been connected with the Lehigh Valley Railroad Company? A. Since 1898.

Q. Have you ever been a director or officer or employee of the Lehigh Valley Coal Company? A. No.

Q. Or of Coxe Brothers & Company? A. No.

Q. Nor any coal company? A. No.

Q. Will you state in a brief way what the organization of the traffic department is? A. I have general charge of the transportation of all traffic, including passenger, freight, coal and milk. 5892

Q. And everything else that you carry? A. Practically everything else; everything that relates to revenue traffic.

Q. And you report direct to the President? A. I report direct to the President.

Q. Who has charge of making coal rates in your subdivision of work? A. Mr. Blood, has general charge of that.

5893 Q. And who under him actually takes care of anthracite and bituminous traffic matters, including the making of rates and such other matters? A. Mr. Grier.

Q. In your departmental organization to whom does Mr. Grier exclusively report? A. To Mr. Blood.

Q. And Mr. Blood in turn to you? A. Mr. Blood in turn to me.

Q. What is the policy of the Lehigh Valley Railroad Company in respect to the development of its merchandise business and its bituminous traffic? A. Well, our
5894 policy is to increase it to its very fullest extent. To that end we have a very large number of solicitors located in the east and in the west and spend a good deal of money for piers, elevators and building up industrial plants along the line of the road, putting in sidings. We have an industrial commissioner, as we call him, Mr. P. H. Burnett, who has charge of that work directly with the parties interested; merchants, manufacturers and others.

Q. Have you ever gone yourself or directed anybody else to go to any shipper or consignee located along the Lehigh Valley Railroad Company and called his atten-
5895 tion to the fact that he was obliged under your contract to ship all of his shipments over the Lehigh Valley Railroad Company because he happened to have a so-called shipping clause in some lease or siding contract? A. No, sir; never.

Q. Have you ever seen any evidence in your department in any form whatever, or anything that looked like evidence that the coal rates or the anthracite rates or the anthracite tariffs of the Lehigh Valley Railroad Company were made to favor the Lehigh Valley Coal
5896 Company or the Lehigh Valley Coal Sales Company?

Mr. Machen: Objected to as matter of opinion.

A. Never.

Q. Do you use just as much effort to get every shipper of anthracite coal along the line of the Lehigh Valley to ship over the Lehigh Valley Railroad as you do to get the Coal Sales Company to ship? A. Oh, yes; I think we are very particular about that, to develop the anthracite business to the same extent as we try to develop any other business along the line.

Q. The effort of your department, then, as I understand it, is to get every shipper you can to ship any kind of traffic over the Lehigh Valley, whether it is anthracite, bituminous or anything else? A. At all times what we are after is revenue. 5897

Q. Do you know of any preferences or favors or discriminations or unequal treatment of any kind afforded to or given in favor of the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company?

Mr. Machen: Objected to for the same reason. 5898

A. Nothing of that kind has ever come before me.

Cross-Examination by Mr. Machen:

Q. Are your duties as Vice-President prescribed by the by-laws of the Lehigh Valley Railroad Company? A. I don't think they are, but I am not sure. I suppose I should know.

Q. Mr. Jarvis, are you the Mr. T. N. Jarvis to whom Mr. Grier's letter dated January 22, 1907, heretofore offered in evidence as Government Exhibit No. 84, was addressed? A. Yes. I don't know the letter, but—— 5899

Q. You have not looked at the letter? A. No, but I see it is addressed to me.

Mr. Wheaton: I offer in evidence the Charter of the Luzerne Coal & Iron Company, which appears in the pamphlet laws of the State of Pennsylvania, for the year 1868, pages 828, 829 and 830, approved the 11th of April, 1868.

Marked **Lehigh Valley Coal Company Exhibit No. 1.** 5900

Mr. Wheaton: I offer in evidence the Charter of the Green Land Company, dated the 29th of May, 1871, which appears in the pamphlet laws of Pennsylvania for the year 1872, at pages 1351 and 1352.

Marked **Lehigh Valley Coal Company Exhibit No. 2.**

Mr. Wheaton: I offer a supplement to the charter of the Green Land Company dated the 2nd

5901 of April, 1872, which appears in the pamphlet Laws of Pennsylvania for the year 1872 at page 727.

Marked **Lehigh Valley Coal Company Exhibit No. 3.**

Mr. Wheaton: I desire that the record should show at this point that the petition of the Government in this case on page 18 of said petition alleges that the Lehigh Coal Company was formed November 13, 1875, by the merger of the Green
5902 Land Company and the Luzerne Coal & Iron Company, and that the answer of this defendant on page 11 of its separate answer admits that allegation. There is no dispute between the Government and the defendant that upon its merger the new name duly certified was that of the Lehigh Valley Coal Company.

5903 **Robert Van Arsdale Norris**, a witness called on behalf of the defendant, Lehigh Valley Coal Company, being first duly sworn, testified as follows:

Direct Examination by Mr. Wheaton:

Q. You live in Wilkes-Barre, Pennsylvania? A. Yes.

Q. And by profession, you are an engineer? A. Yes.

Q. And both a mining and civil engineer? A. My degree is mining engineer. I have practised both mining and civil.

Q. Your degree was from what college? A. Columbia School of Mines, New York.
5904

Q. Class of what year? A. 1885.

Q. You also have another degree from Columbia since that time, have you not? A. Yes; they gave me an honorary degree of Master of Science in 1914.

Q. What has been, briefly and concisely, your practical experience as a mining engineer since graduating? A. Upon graduation I was appointed assistant in surveying, and later assisted in mining, in Columbia, which position I held during the summer of 1885. During the fall of 1885 and spring of 1886, I was in various mis-

cellaneous work, Government inspector of dredging materials, etc. On June 14th, 1886, I got a job with the Susquehanna Coal Company, on the corps pulling the chain, and remained with them in various positions, through assistant engineer, principal assistant engineer and chief engineer of coal companies up to April 15, 1904, when I decided to go into private consulting practice, and at that time I was appointed consulting engineer of the Susquehanna Coal Company, which position I held until April 15, 1914. 5905

Mr. Machen: What company? 5906

The Witness: Susquehanna Coal Company. Since 1904 I have been in general consulting practice as mining and civil engineer, with offices in Wilkes-Barre and part of the time in New York.

Q. You are a member of the American Society of Civil and Mechanical Engineers? A. I am a member of the American Society of Mechanical Engineers and the American Society of Civil Engineers, and a member of the American Institute of Mining Engineering, and am a Past Vice-President of that society; a member of the Canadian Mining Institute; the Northern England Institute of Mining Engineers, which carries with it membership in the Institute of Mining Engineers of Great Britain, and numerous Mining Congresses; I am secretary of the coal section of the International Mining Congress, San Francisco, in 1915, and Chairman of the Committee on Coal Taxation of the American Mining Congress; Chairman of the Anthracite section of the American Institute of Mining Engineers; also I have been consulting engineer for the D., L. & W. Railroad Company in the coal department since 1906. I have lectured on coal mining in Harvard since 1906, and lectured on coal mining at Columbia at intervals since graduation. 5907 5908

Q. And very recently you have been engaged in appraising the values of the coal properties of the Temple Coal & Iron Company? A. Yes, sir.

Q. And of all the coal companies in which the Pennsylvania Railroad Company has any interest? A. I am engaged in that now, appraising the Pennsylvania Rail-

5909 road and Susquehanna Coal Company, in which the Pennsylvania Railroad has an interest.

Q. You testified in the case known as, and referred to in this proceeding frequently, as the old Reading case, did you not? A. I testified in the case of the United States versus The Reading Coal & Iron Company, *et al.*, on the part of the Temple Iron Company. I believe it is Number 859. It is in Volume Four of the record.

Q. Now, Mr. Norris, have you read over carefully the testimony which you gave in that case? A. I have,

5910 several times.

Q. And are you prepared now to say whether or not, as of that date, it was correct? A. With the exception of some very minor typographical errors, it is.

Mr. Wheaton: I wish to incorporate this into the record, the testimony being as of that date, as being the direct testimony of Mr. Norris in this case, the testimony being found at pages 386 to 438, both inclusive of Volume IV. of the record in the old Reading case, and I will ask the stenographer to copy it into the record, in the form

5911 corrected by Mr. Norris.

"**Robert Van Arsdale Norris,** having been duly sworn, was examined as follows:

"By Major Warren:

"Q. Where do you reside? A. Wilkes-Barre, Pennsylvania.

5912 "Q. What is your profession? A. Engineering.

"Q. Where did you take your degree? A. Columbia School of Mines, Class of 1885.

"Q. Your degree was what? A. Engineer of Mines, represented by the letters E. M., the usual mining degree.

"Q. Will you please tell me your association, briefly, with both anthracite and bituminous mining? A. In June, 1886, I went to the Susquehanna Coal Company, one of the Pennsylvania Railroad interests, as assit-

ant engineer. Until 1902, I remained in the position of 5913
assistant engineer, when I was made principal assistant engineer up to 1900. In 1900 I was made chief engineer of coal companies comprising the Susquehanna Coal Company, the Mineral Railroad & Mining Company, The Lykens Valley Coal Company, Summit Branch Mining Company, and later the Union Coal Company and the Lytle Coal Company. I remained chief engineer to April 15th, 1904, when I resigned as chief engineer and was made consulting engineer of the same companies, since which time I have been in private con- 5914
sulting practice.

"Q. For what companies? A. I am official consulting engineer for the companies I have just named, controlled by the Pennsylvania Railroad, and for the Delaware, Lackawanna & Western Coal Department. I am also consulting engineer for the Stone Canon Consolidated Coal Company of California, and have been general manager of the same as a temporary office. I am consulting engineer for the Wilkes-Barre & Hazleton Railroad Company, The Sterling Salt Company, and I have been employed as consulting engineer by the Le- 5915
high Valley Coal Company, the Lehigh & Wilkes-Barre Coal Company, the Delaware & Hudson Company, the Lehigh Coal & Navigation Company and the Stevens Coal Company, and possibly some others.

"Q. Have you been employed as consulting engineer in connection with the construction of any storage plants? A. I built the McClellan storage plant of the Susquehanna as their chief engineer, and I was employed as consulting engineer in charge of the erection of the Ransom and Black Creek storage plants of the Lehigh Val- 5916
ley Coal Company.

"Q. Are you a member of the American Society of Civil Engineers and Mechanical Engineers? A. Yes, sir.

"Q. Are you a member of the Harvard University faculty? A. I am a non-resident lecturer on coal mining at Harvard, which position I have held for the past three years, yes.

"Q. You lecture there every year? A. I lecture there every year; I give the entire course in coal mining at Harvard every year.

5917 "Q. By-the-by, the Stone Canon Consolidated Coal Company is engaged in mining what kind of coal? A. Bituminous coal.

"Q. You are familiar therefore, with the methods and practices associated with the development of bituminous and anthracite lands from the incipiency to the delivery of the manufactured product to the seller? A. Yes, sir, I am also a member and counsellor of the Institute of Mining Engineers and a member of the North of England Institute of Mining Engineers, which carries
5918 with it membership in the Institute of Mining Engineers of Great Britain.

"Q. Are you familiar with what are known as the anthracite coal fields of Pennsylvania? A. Yes, sir.

"Q. And all regions? A. Yes, sir, I think I can say I am.

"Q. Will you give us the topographical conditions, briefly, of those fields? A. The anthracite region is divided geopraphically and topographically into three fields, although they are usually divided for convenience into four. The Northern Field, occupying the Wyom-
5919 ing and Lackawanna Valleys, lies in a broad, canoe-shaped basin, in the vicinity of 50 to 60 miles long, and perhaps ten miles wide, in its widest place. The coal is generally flat and pitches up gently to the mountains, which encircle the two valleys. The Middle Field, sometimes known as Hazleton Field, lies in a very broken country, about twenty-five or thirty miles south of the Northern Field, and consists of a number of relatively very small basins, extremely narrow, and the coal on very steep pitches. The Southern Field begins at a point
5920 just beyond Mauch Chunk, in a broad canoe-shaped basin, ending with two tails, one running practically east and west and compromising the Shamokin Field and the other running southwest and compromising the tail of the Southern Field. The Shamokin Field is usually known as the Western Middle Field, although it is an integral part and connected with the southern basin. The measures all through the Southern Field are generally steep. The Southern Field is intersected by several ranges, and, while the main valley of the main Southern Field, is a broad valley, although not

nearly so broad as the Northern Field, the upper tail cuts through the ridges, and runs in a very broken country almost to Sunbury, on the Susquehanna River. 5921

"Q. What do you mean by the expression 'pitch of veins?' A. Pitch of veins is the inclination to the horizontal. A flat vein will have an inclination of usually not over eight to twelve degrees to the horizontal, while a pitching vein may range from twelve to fifteen degrees up to absolutely vertical or even reversed.

"Q. What do you mean by the outcrop of a vein? A. The outcrop of a vein is the point where the coal vein, or bed, as it is more properly designated, intersects the surface of the ground. 5922

"Q. Will you briefly describe the geological conditions of the anthracite field? A. The Northern Field, as I have said is relatively flat, in a generally canoe-shaped basin, the coal extending generally in a sheet of very moderate inclination from one side of the field to the other, and being more or less continuous on very gentle declivities from the two ends towards the deepest point, which is a little below Wilkes-Barre. The field, however, while in general smooth, is intersected by a large number of faults and anticlinals, so that it forms a number of local basins, which involved separating collieries and arranging the collieries to mine the coal between the particular anticlinals that can be reached without the cost of tunneling through the rock of these anticlinals. The Northern Field, too, is relatively deep, the deepest point being about twenty-three hundred feet, in the Hanover Township, Luzerne County. The Middle Field consists of a number of relatively very small basins, on extremely steep pitches, but not very deep. As far as I know, the deepest point in the Middle Field, will not exceed five or six hundred feet. The field was presumably a basin similar to that of the Northern Field, but the coal on the coal on the anticlinals has been eroded off, leaving only the bottom of the synclinals in the basins. The Middle Field, too, is peculiar in that the basins, being extremely narrow it is frequently possible to strip the surface off the upper seams and quarry this coal instead of mining it by underground methods. The 5923 5924

5925 Southern Field is also intersected by very many faults, the Shamokin district particularly being really a series of canoe-shaped basins fitting into such other, and almost dividing the field into separate basins, as is the case in the Middle Field, although actually the coal almost invariably, the lowest seams almost invariably pass over the anticlinals, making a continuous sheet of coal, except for the faults; but as a mining proposition it is practically separate basins. The Southern Field is the deepest of all, the deepest being figured to probably
5926 thirty-five hundred or four thousand feet in the deepest part. The pitches, as far as it has been mined, are extremely steep. The central part of the basin never has been mined. The Southern Field also is notable in the eastern part at least, for the enormous 'Mammoth Vein' which reaches its maximum development in the lands of the Lehigh Coal and Navigation Company, where its normal thickness is sixty feet and where, in abnormal places, it has been measured as high as two hundred and twenty-five feet and, in one instance four hundred.

"Q. What is the pitch of that vein? A. Vertical.

5927 "Q. Vertical? A. Vertical in the thick parts. The bottom of the basin has really never been explored. As far as mined the coal is very nearly vertical; it will stand from seventy-five degrees to ninety degrees.

"Q. Will you give me the location of the collieries of the Susquehanna Coal Company and the other companies with which you were associated for so many years? A. Of the Susquehanna Coal Company, the collieries with which I was associated as chief engineer, comprise the Manticock collieries of the Susquehanna Coal
5928 Company, located in the western and of the northern field; the collieries of the Mineral Railroad and Mining Company, in the western end of the Shamokin Field, of the Union Coal Company in the middle of the Shamokin Field, The William Penn colliery in the Mahanoy district; which is a part of the southern district; The Lykens Valley & Williamstown collieries in the extreme western end of the Southern Field, they being the only two collieries in Dauphin County. The Lytle colliery is at Minersville, directly in the Southern Field.

"Q. Minersville is how far from Pottsville? A. I think 5929
about four miles.

"Q. The Susquehanna Coal Company proper is situated where with reference to Wilkes-Barre? A. The Susquehanna Coal Company collieries?

"Q. Yes. A. The Nanticoke collieries are about eight miles westerly from Wilkes-Barre; but the Susquehanna Coal Company now mine what were previously known as the Union Coal Company collieries, and, in my time, were the Union Coal Company, in the Shamokin district, and the William Penn colliery and the Lytle col- 5930
liery in the Pottsville district.

"Q. Did you tell me how many of the collieries of the Susquehanna Coal Company were located in Luzerne County in the Northern Field? A. Three at the present time, there were five.

"Q. Give me their names? A. Nos. 5, 6 and 7. Nos. 1, 2, 3 and four were in existence and operation when I went with the company as engineer, and have all been abandoned.

"Q. Abandoned for what reason? A. Abandoned be- 5931
cause the coal property tributary to them was practically exhausted, and because the breakers had become out of date and, in the case of No. 2, unsafe.

"Q. How many years have you resided at Wilkes-Barre? A. Twenty-three years.

"Q. Continuously? A. Yes, sir.

"Q. The offices of the Susquehanna Coal Company, are in Wilkes-Barre, are they not? A. The mining offices are; the executive offices are in Philadelphia.

"Q. You have retained your office there since you re- 5932
tired from continuous service with the Susquehanna Coal Company? A. I have my principal private offices in Wilkes-Barre, although I also have offices in New York.

"Q. Having resided in the Northern Field, and having been familiar with the development of those regions for twenty odd years, will you tell us that which is within your knowledge as to the acquisition of coal lands by the various companies, large and small, and your observation of it during that time. A. There has been

5033 a relatively very small amount of coal land on the market at any time within my experience, that is, of the lands that were known to be profitable. In fact I have examined a great many individual lands that did not promise to be profitable.

"Q. For what companies? A. For the Pennsylvania, for the Susquehanna. All the companies and individuals have snapped up every particle of land that came on the market and have been in apparently very keen competition for it.

5034 "Q. Each against every other fellow? A. Each against every other fellow. As a matter of fact, personally, I have had control of a certain amount of coal lands, and one small piece that seemed desirable to sell, we had four offers for it and it was finally sold at what has proved to be the record price of coal in the anthracite region, $3,000 an acre.

"Q. Which company finally got that land? A. It was bought by individuals.

"Q. How recently? A. About three years ago.

"Q. What individuals? Some associated with com-

5035 panies? A. No, not directly. It was bought by—the deed was given to Mr. A. L. Williams, an attorney in Wilkes-Barre. Who his associates were I do not know, although I have understood that Mr. Thomas of Pittston and Mr. Morris Williams of Philadelphia were in a way associated with him. This land, however, was entirely surrounded by the lands of the Lehigh & Wilkes-Barre, and the Lehigh and Wilkes-Barre were outbid for it by individuals. During the same time the Lehigh Valley, within about three years purchased the Warrior

5036 Run colliery, a body of land entirely surrounded by the Lackawanna lands, and are now operating it. The Lackawanna purchased and leased the Pettibone colliery, which is entirely surrounded by the Lehigh Valley lands, and would naturally be mined by the Lehigh Valley. In the Southern Field there have been a number of purchases of lands apparently in the most vigorous competition. In the leasing, there has been extreme competition in obtaining the lands. This was particularly the case back in the late 80's, when two very

large leases were made from Abram Nesbit to the Dela- 5937
ware, Lackawanna & Western Railroad at, I understand a royalty of fifty-five cents a ton, and from L. D. Shoemaker to the Lehigh Valley, at, I know, a royalty of fifty cents a ton. These royalties were higher than have been the royalties of the large leases made within the past two or three years. The two largest recent leases that I know of were the Hollenbach Coal Company to the Lehigh and Wilkes-Barre, which I understand, was forty cents a ton for prepared coal from some veins, and thirty-five from others; and the Coxe Estate leased 5938
to—I do not know whether it was Coxe Brothers & Co., Inc., or to the Cross Creek Coal Company—but the price was, I understand, forty-five, forty and thirty-five, depending on the seams.

"Q. By-the-bye, you had some association with Coxe Brothers & Co., Inc., did you not? A. I was their consulting engineer for nearly four years.

"Q. I now want to ask you about the cost of holding lands, and I wish you would put into the record, as clearly as you can, a statement that will show how the lands available to a colliery can only be presently 5939
reached—I mean the coal in them—in small proportions, and how it is necessary to have a large acreage, a large proportion of which must lie fallow, if I can use that expression, until, by the best scientific methods, the workings can reach those lands. Perhaps I have put that rather awkardly, but I would like to have you tell us, if it is within your knowledge, what that is a factor of cost in connection with first, the acquisition, and second the necessary retention of lands until they can be actually reached. A. Your question has several points. 5940
First as to the cost of holding lands; I think it is fair to assume that the present market price of the best anthracite land approaches or equals $3,000 an acre. I personally made the last fair sized sale at that price and I do not believe it will be decreased for land of that quality. There is, as a matter of fact, very little of coal land of the quality then sold, which contained about sixty feet of coal, remaining.

5941 "Q. You do not mean in one vein? A. No, a total of sixty feet of minable coal. The cost of holding land, then, for a considerable time would be made up of two items; first, the cumulative interest on the original investment, and second the taxes, with the cumulative interest on them. The present taxes in the anthracite field are very closely four per cent., about forty mills, and the present valuation is about fifty dollars a foot acre, although that is subject to a decision by the Pennsylvania Supreme Court, which, I believe has not been
5942 fully rendered.

"Q. You mean by foot acre what? A. A foot acre is an acre of coal one foot thick, which is the method by which coal has been taxed. Then the taxes per acre of coal, sixty feet thick, which I will take as a basis, as being the best average of coal, and as coal which would have a market price of $3,000 and acre, would be about $120 a year per acre. Then for twenty-five years holding the $3,000 first cost of an acre would stand the owner in $12,900 and $120 a year taxes, with compound interest at 6%, $6,600 more, making the cost of an acre
5943 twenty-five years hence bought to-day at $3,000 about $19,500. Taking it for fifty years holding, the compound interest would multiply the present investment by about eighteen and four-tenths, making the $3,000 amount to $55,200 approximately, and the taxes with compound interest at 6%, would amount to $34,020, which is a total per acre of $89,220. Such a piece of land, would under present methods of mining, be expected to yield about a thousand tons per foot acre, or about sixty thousand tons for the acre; so that fifty
5944 years hence the coal would have actually cost nearly a dollar and a half a ton.

"Q. And twenty-five years hence it would be what? A. Thirty-two and a half cents.

"Q. Now, tell me please, in what way these facts which you have given us are associated with the anthracite mining? A. I was going on to do that as the second point of your question. In opening a colliery, it is necessary to be able to figure on a sufficient tonnage to warrant the present large expenditure in development and

in breakers and machinery, power plants, electric 5945
plants, and so forth. It is pretty generally conceded that five hundred acres of good coal lands is as little as should be tributary to a modern colliery, which will give a life of from sixty to eighty years. Then in mining, only a certain amount can be taken every year, and it is absolutely essential to get back your investment, to warrant your investment, to let the balance lie fallow until such a time as it is reached in the natural course of mining. It is further impossible to mine all the seams at once, as such mining results in the loss of a very large 5946
amount of the coal, and the proper method of mining is to keep the upper seams always in advance of the lower ones, and, in mining back, or robbing, the upper seams must be robbed first to avoid crushes in them, dislocating the seams below and destroying the coal in place, which then could not be recovered.

"Q. Could you give us a statement as to the proportion of the lands contiguous to a colliery which are idle, we will say for ten years and then for twenty and then for thirty, having in mind the history of the development of colliery operations within your knowledge? A. 5947
Yes, I would say that in each ten years practically twelve and a half per cent.—in each ten year period practically twelve and a half per cent. of the lands contiguous or tributary to a colliery would be mined over.

"Q. Of the railroad connections to a colliery, which of them are put there by the colliery companies, and which by the company to whom the colliery company sells its coal? In other words, which are places constructed and built by the colliery and which by the railroads? A. That varies with different cases. Originally, for instance, 5948
all the colliery tracks from the connection with the Pennsylvania of the Susquehanna Coal Company were built by the Susquehanna Coal Company, and owned by them. They were afterwards, except the breaker tracks, sold to the Pennsylvania Railroad Company. The usual practice, however, is for the colliery to own their breaker tracks, including the tail tracks and sidings, and for the railroad company to run an extension or spur, often to a very considerable length, to meet the end of the breaker tracks.

5949 "Q. You know something about railroad building? A. Yes, I have built two or three railroads of minor importance.

"Q. What would you say, recalling the topographical conditions of the anthracite fields, what would you say by way of comparison as to cost of constructing spur lines or branches into the colliery operations as compared with general railroad construction? A. The anthracite collieries are almost invariably in rough country, save a few in the center of the Wyoming Val-
5950 ley and a few in the center of the Pottsville and Panther Creek Valleys, and the construction of railroad to them is necessarily mountain work, and exceeds in expense the ordinary cost of railroad building through the country, although I do not think it does exceed the cost of the ordinary mountain work of railroads.

"Q. How much does it exceed, would you say, the cost? What is the difference in the initial cost of construction of such branches into collieries and building into the regions of the main lines, by coal roads, I mean? A. I do not think I could answer that. The cost of construc-
5951 tions of colliery branches has been, as far as my knowledge has gone, $40,000 a mile. That is what we usually have allowed for it in estimates; but I have no knowledge of the cost of building coal roads in. The ordinary cost of building railroad in flat country does not exceed, $15,000 or $16,000 a mile. I built twenty-four miles of railroad last year that cost about $14,000 a mile.

"Q. These switch tracks and tail tracks and other tracks in connection with the colliery, of course, are worthless when the colliery ceases operation? A. Ex-
5952 cept as to the iron, yes.

"Q. I mean for any other purposes than what salvage there may be? A. Yes. Furthermore, I might say, in connection with that, that the switch tracks and sidings of an anthracite colliery are very extensive on account of the necessity of loading many different sizes and classifying them, as well as the large output of modern anthracite breakers.

"Q. And they have required what re-arrangement, if any, due to the introduction in the last ten years of dif-

ferent sized railroad cars of one sort or another? A. I 5953
can only answer that in connection with the Susquehanna and associated mines, of which I was chief engineer at the time of the introduction of large cars some ten or twelve years ago. It was necessary to remodel all the breaker tracks at every colliery. The cost, as I recall it, was considerably over $100,000 for the mere re-grading to a height enough to get the large cars under the lip chutes of the breakers.

"Q. By-the-bye, the Susquehanna Coal Company buys coal from so-called independent coal companies, in other 5954
words, from coal companies other than those which are controlled by the Pennsylvania Railroad, does it not? A. I do not know. My experience has been entirely in the operating end and I have no personal knowledge of the sale or transportation of coal.

"Q. You spoke a moment ago about the small amount of reserve in the Northern Field; will you tell us what that amounts to? A. By that you mean the amount of absolutely virgin territory available for new collieries, do you not?

"Q. Yes, left to develop. A. Because there is a very 5955
large amount of reverve held in connection with the present operating collieries.

"Q. And owned by the companies controlling the operating collieries? A. Owned or leased by the companies controlling such collieries.

"Q. In other words, lying fallow? A. Yes.

"Q. I do not refer to that. A. The only large bodies of undeveloped coal, which are not tributary to any present collieries, as far as I know, in the Northern Field, are two pieces between Nanticoke and Glenlyon, 5956
one owned by the Lehigh and Wilkes-Barre and one by the D., L. & W. The Delaware, Lackawanna & Western piece would hold one colliery and the Lehigh and Wilkes-Barre one and possibly two. Between the Nanticoke lands of the Susquehanna and Wilkes-Barre City, there is a large tract owned in fee by the Lackawanna Road, which has room now for four good collieries, which is absolutely undeveloped.

5957 "Q. How many years have you known that tract to lie fallow? A. I assume that your question refers to coal developed by a colliery?

"Q. You have just said that the Delaware, Lackawanna & Western have some land there that might support two or three colliery operations. I want to know how long they have owned it. A. I do not know exactly. My impression is that it was bought in the early 70's. It was not far from that. Taking the question as I understood it, the longest time that I have known of a
5958 colliery conducting an operation with reserves is the Lykens Valley colliery, which, I believe, started operation in 1838, and is still in active operation and has reserves, at their present rate, for forty or fifty years more, or possibly more than that.

"Q. Did you make for me at my request a list of the independent operators in Luzerne County, taking them from the State reports prepared by the mine inspectors? A. I did, sir.

"Q. Is this that list? (Showing witness statement.) A. Yes. This is taken from the 1907 Inspector of Mines
5959 Report, the report of the Secretary of Internal Affairs for the Inspector of Mines in 1907. This is a list of the so-called independent operators in Luzerne County.

"Major Warren offered the statement in evidence.

"Marked 'Temple Iron Company's Exhibit No. 8, C. H. Guilbert, Examiner.'

"Q. Now, as to the development and equipment of the region, in colliery development, I mean, within the
5960 last fifteen years, and the colliery capacities, what have you to say as to that, in view of the acquisition of the lands by these several companies as you have suggested? A. I do not know as I quite understand the question.

"Q. Let us see if I can state that a little more clearly. Has there, or has there not been, within the last fifteen or twenty years, and up to, we will say, the last seven years, an over equipment of colliery capacity in excess of the ability to dispose of the product? A. Yes, when I came into the region and up to a very few years ago,

there was a very decided over-equipment in the region. 5961
The collieries which the practically identical with the collieries of today which are shipping 75,000,000 tons, were supplying a market of only half that amount, while they had a capacity of double their shipments. The market has generally caught up to the equipment of the collieries, until, at the present time, or except this last year, when there has been a slacking off owing to a business depression, the collieries are working practically full time and up to capacity, as far as I know.

"Q. Say, within the past six years, the question of 5962
mining then, has been only of mining sufficient coal to supply the market, rather than to find a market for the coal that could be produced? A. As far as the operation of the collieries is concerned, I believe that to be the case; I do not know about the market itself. I simply know that the collieries have been working full time and practically full capacity. Furthermore, I know that, as the mines are extending, it is becoming more and more difficult to maintain the output of the separate collieries, both on account of the mining of thinner seams, and on account of the greater extent of the work- 5963
ings requiring longer haulage and more ventilation, and so forth. Many collieries, too, are beginning to play out, and it has been necessary in instances, to consolidate what were previously several shipping breakers and bring all their output to one breaker in order to give that one breaker its capacity. A particular case of that would be the William A. breaker of the Lehigh Valley Coal Company, which, at the present time, takes coal from what was previously the William A. colliery and also from the Lawrence and Babylon workings, both of 5964
which have been worked over, and even at that the William A. colliery's output is not up to the capacity of the breaker, although three collieries have been consolidated to give it coal. The same thing is being considered with other companies and there are other instances—although I do not recall any at the moment, but I can if it is necessary—but the same thing is being considered in many places where it is becoming almost impossible to keep up the output of individual breakers.

5965 "Q. In this connection, I show you some tabulations on sheets of paper which I will ask you to identify and tell me what they are, what they represent, and the sources of the figures which there appear? (Handing statement to witness.) A. These sheets were made from the Inspector of Mines Reports for the years 1899 and 1907, showing the tons shipped, breaker-hours worked, number of employes and miners in total, the number of employe hours for miners and for all classes of employes; the tons shipper per employe hour for miners
5966 and for all classes of employes; and the increase or decrease of the amount shipped per miner hour of 1907 over 1899. It is taken from the Northern Field only, comprising all the operations in that district, except that the operations of individual collieries which do not appear in 1899 have not been put in there, as there is no comparison. Individual collieries which were operated in 1907 but not in 1899 have not been put in there as there was no basis of comparison for them, although any change in ownership has not been considered. If a colliery appeared in 1899, the ownership has not been
5967 considered in putting it in in 1907 as an operation.

"Q. But the same colliery is put in? A. The same colliery is put in, is named and put in.

"Q. Will those tables thus prepared show the deficiency or otherwise in the output per miner in labor, in other words, in 1907 as compared with 1899? A. Yes.

"Q. In other words, this is for the comparison of conditions in 1899 as compared with conditions in 1907? A. Yes.

"Major Warren offered the statement in evi-
5968 dence. Marked 'Temple Iron Company Exhibit No. 9, C. H. Guilbert, Examiner.'

"Q. In the past twenty years to what extent if any, has the cost of equipping a colliery increased? A. The total cost of equipping a colliery has more than doubled in the past twenty years and the cost of building a breaker has more than quadrupled. The breakers that were built when I started in the region, the cost of the largest would not exceed $50,000, while the cost of a

modern breaker alone is from $150,000 to $200,000, and, with its necessary steam equipment, and so forth, often double that. The cost of sinking the large modern shafts that are required to handle the large outputs runs into enormous sums of money. One shaft which I was in charge of sinking, completely equipped, cost $846,000 complete, without any breaker or any mine workings, but including the sinking of the shaft, the hoisting plant, the steam plant, the surface and bottom turnouts for the mine cars, and the water hoisting equipment. 5969

"Q. Can you give a comparison of the cost of a colliery, say at any time prior to 1890, with which you were personally familiar, and the cost of construction of a colliery similar in its make-up, after 1900, with which you may have been familiar? A. Yes. 5970

"Q. Please do that? A. One colliery equipped from 1883 to 1886, cost a total of practically $324,000, and a similar colliery equipped between 1905 and 1907, $603,000. The breaker of the first colliery, in 1883 to 1886, cost $28,000, and of the second one $143,000.

"Q. What increases have there been in labor cost, that is, in the wages of labor, in the last ten years? A. In the wages of labor there have been advances. In 1900 a powder adjustment amounting to about seven and one half per cent. on the miners' wages, and an increase of ten per cent. on the general wages at the collieries; in 1902 a further increase of ten per cent., making twenty one for the general employes and twenty eight and one half for the miners, together with a sliding scale which was granted in 1902, and which amounts to an average of about four per cent. a year. 5971

"Q. That aggregates what figure then in additional labor cost in ten years, to the miners? A. It amounts to twenty-five and eight tenths per cent. advance for the general employes and thirty-three and three tenths per cent. advance for the miners. 5972

"Q. The miners are employed in what way? A. The miners are employed in cutting and loading coal.

"Q. Under what agreement, what form of agreement? A. That varies in the different regions. In the Northern Field they are almost invariably paid by the mine carload as a unit.

5073 "Q. Then they are the contractors? A. In all cases they are contractors. In the Southern Field, in all steep pitching veins, they are paid by the yard of chamber driven, as it is necessary to leave coal in the chambers, and it is not practicable to pay them by the mine car, as they might not receive their pay for many years. They are in all cases, or almost all cases, contractors who agree to drive a chamber or a gangway for a certain price per car of coal, and, in the case of gangways or narrow work, an additional price per yard of gangway or cross-
5074 cut driven. In a few cases they are paid by the day, by the operator, in which case they are known as company men, and usually employed in places where it is impossible to make a contract with a miner to do the work. The contracting miner supplies his own labor and his own powder and tools; the company miner supplies nothing, except, in some cases his oil and his tools. The company miner, the company supplies him with powder and supplies him with labor.

"Q. What proportion of the labor cost of a ton of coal is represented by that which you pay to the miner, would
5075 you say? A. That varies very largely in different collieries.

"Q. Can you give me any fair approximation or average of that so that I can put into the record a fairly representative statement of the proportion of the labor cost that goes to the miner, as to which some of these increases apply, where it does not apply for other kinds of labor at the collieries? A. Usually from forty per cent. to sixty per cent. of the total cost of mining coal is paid directly to the miner for cutting and loading.

5076 "By Mr. McReynolds:

"Q. Of the labor cost, you mean? A. The total labor cost.

"By Major Warren:

"Q. Forty to sixty per cent.? A. It varies very largely in different collieries. It varies very largely indeed in different collieries.

"By Judge Moot: 5977

"Q. What I am not sure is whether you mean total labor cost, or mine cost? A. Total mine labor cost.

"By Major Warren:

"Q. That is, of the total wages paid to the men and for all employes of the colliery in the mining and manufacturing of the coal into a marketable or loadable commodity, from forty to sixty per cent. is paid to the contract miner? A. Yes.

"Q. The balance is paid to what class of what em- 5978
ployees? A. All classes, inside and outside.

"Q. I mean, they have what to do, with the manufacture of the product? A. The laborers inside and outside, pump men, engineers, breaker men, slate pickers, carpenters, blacksmiths, machinists, superintendents, foremen, doorboys, drivers.

"Q. But not all the labor inside, because you have just said that some of the labor inside is paid by the contract miner? A. That is the miner's laborer; outside of the miner's laborer. The miner's laborer is 5979
not ordinarily recognized as separate from the miner. The miner is paid for his contract and he is supposed to pay his laborer.

"Q. Are these figures, from forty to sixty per cent., as close as you could state? In other words, can you not get those figures nearer, and do it fairly, I mean, as representing the average in the region, of the proportion of the total mine labor cost which goes to the miner? Could you do it by giving it some consideration, and going over your figures? A. I might do it.

(At 1 P. M. a recess was taken until 2 o'clock P. M.) 5980

2 P. M.

Counsel present:—Messrs. McReynolds, Moot, Warren and Campbell.

R. V. Norris, resumed:

Direct Examination (continued) by Mr. Warren:

"Q. Can you now give us any figure that will more closely approximate any one in this figure, the per cent.

5981 of the total labor cost, which has to do with the miner? A. No. The difference in various collieries is so great that it will range between forty and sixty per cent. of the total cost. Without taking all the collieries in the region, and spending some weeks on figures which are not available to me, I would be unable to give you that average.

"Q. Did you give me your estimate of the cost of construction of the modern breaker to-day? A. I did.

"Q. Including outside equipment? A. Including out-
5982 side equipment it will approximate from $400,000 to $500,000. That would depend on how much of the outside equipment you would consider as belonging to the breaker.

"Q. Have you any knowledge of the increases of outside labor cost, for the Wyoming & Lackawanna regions in the last ten years? A. Yes, in certain cases.

"Q. Can you give us those percentages, and put them into the record? A. In the Wilkes-Barre region, taking certain collieries, the increased inside cost between 1899, and 1908 ranged from about thirty-four to sixty-four
5983 per cent., with an average of between thirty-five and thirty-six. In the Lackawanna region, for the same time, in one large operation, the average was practically sixty-two per cent.

"By Mr. McReynolds:

"Q. That is in one company? A. Yes, sir.

"Q. What company is it? A. Temple.

"By Mr. Warren:

5984 "Q. Temple Iron Company? A. Yes, sir.

"Q. Which has several collieries? A. Yes, sir.

"Q. Are they, or are they not, with your knowledge of the Lackawanna region, typical of the average conditions as to veins and cost of mining for that section of the Wyoming field? A. Yes, sir; I should think they were quite typical of the Southern district. They are not typical of the Luzerne district.

"Q. Now, I would like to ask you whether those colliery operations, as to which you have made investiga-

tions, and of which you have spoken here, are typical 5985
in like manner of the Luzerne Field of the Wyoming region? A. Yes, sir; I should consider them quite typical.

"Q. What increase, if any, has there been in the cost of material used at the mines in the same period of time, from 1899, as compared with the present time? A. It is somewhat difficult. I do not know that I can answer that directly. The material is so interspersed among the different items of cost, that it is quite a difficult matter to separate it. In one particular company, 5986
and two different collieries, the cost of material increased from fifteen to thirty-eight per cent. with an average of about sixteen for that number of collieries in the Wyoming region.

"Q. From the investigation which you have made, typical that you have in the Northern Field, what would you say has been the total increase in labor cost from 1899 to 1908. A. In the Luzerne district, from twenty-five to thirty per cent., and in the Lackawanna District from forty-five to fifty per cent.

"Q. What has the increase in cost of mining been 5987
about, in between 1879 and 1908? A. The only cost which came under my observation—I was not in the region in 1879—was in an agreement made between the Kingston Coal Company and the Lackawanna for mining a certain part of the Lackawanna land, in which the payment was dependent on the cost of mining only. The basis in the agreement, which was the cost of mining in 1879, was forty-eight and forty-six one-hundredths per ton on prepared coal. The settlement in 1908 also on prepared coal was at the rate of one dollar thirty-one 5988
and nearly eight-tenths, or an increase of about one hundred and seventy-three per cent. That is based entirely on prepared coal.

"Q. This increase in cost has been accompanied by what decrease, if any, in the efficiency of the individual miner? A. There has been a marked decrease in the efficiency of the individual miner. In the figures which were put in evidence this morning, taken from the mine inspector's report, the efficiency of the individual miner

was figured in tons output per hour work during the years 1899 and 1907. The average decreased efficiency of the entire region was thirteen per cent. The variations among the large corporations were from forty-one per cent. to one and two-tenths per cent. Among the individual operators from sixty-four per cent. increased efficiency, which was from the Red Ash Coal Company, and I happen to know that it was due to the stripping of coal.

"Q. Which is a cheaper process? A. Very much, and a different process—to fifty-nine per cent. decrease at the Stevens Coal Company.

"Q. Your last figures there are for the year 1907. I might have put them in the record, but I want to be sure about it. A. They are for the year 1907, the last years, which is from the mine inspector's report. It is the figures of 1899 to 1907.

"Q. You could not get 1908 figures, because they are not yet prepared and published? A. No, sir, I want to add to that that these figures are the totals of the different operating coal companies, and individuals, and not for individual collieries. I have not worked out the percentages for the individual collieries. I do not know how they may vary.

"Q. This decrease is due to what, in your opinion, and from your knowledge of the business, that is, this decrease in output? A. The decrease is due to two causes. First, to the mining of thinner seams, and secondly, to an actual decrease in the work done by the miner.

"Q. In the efficiency of the man? A. In the efficiency of the man. In the thinner seams below six feet, it is necessary for the miner to remove a certain amount of rock, and, as the seams get thinner, this amount of rock increases. So that where a man would perhaps run six cars from a six foot seam of coal, in a three foot seam, he might mine three cars of coal and three cars of rock, during the time he was previously mining six cars of coal. Roughly figuring it from the imperfect data, about one-third of this decrease is due to mining thinner seams. It would be practically impossible to make an investigation sufficiently detailed to give anything more than a very rough guess at it.

"Q. These increased costs you say are based on total output. Now, if they were based on prepared sizes only, which I think the record shows were the only sizes shipped in the earlier years, to what extent would that affect the per cent. of the increased cost? A. Taking the Northern Field only—I could hardly answer for the other fields—the average percentage of the prepared sizes at present approximates sixty-five per cent. On that basis there would be a further increase of about fifty-four per cent. to be based entirely on prepared sizes. 5993

"Q. The other, or smaller sizes, they are called products, are they not? A. By-products. 5994

"Q. Which, of course, decreases the total reported cost of mining, because they are now included? A. Very materially.

"Q. I would like to ask you as to whether it is a fact or not, that not a pound of the coal under the prepared sizes ever has been, or can be sold at a price equal to the average cost of mining and preparing the entire output? A. From every investigation I have ever made, and from every conversation I have ever had with any one understanding the cost, I believe that in no case, except during the strikes, has there been one pound of coal under prepared sizes sold at the average cost of the mining and preparing all sizes of coal. 5995

"Q. You mean to say by that, it has never brought as much? A. It has never brought as much as its average cost.

"By Mr. Campbell:

"Q. The average cost? A. As the average cost. 5996

"By Mr. Warren:

"Q. Of course, you know about washeries, do you not? A. I built a few.

"Q. The statistics show a production from washeries during the years 1906, 1907, and 1908 of a certain per cent. of the total production of anthracite coal? A. Yes sir.

5997 "Q. Do you know it discloses what as to percentage during these last three years? A. Yes, sir, I think I have it somewhere. From SEWARD'S COAL TRADE JOURNAL, which is considered an authority on statistics of that sort, the washery production in 1906 was six and ninety-one-hundredths per cent., 1907 six and twenty-one one-hundredths, 1908, estimated at six and two one-hundredths, in the 1909 edition.

"Q. This amount has also been figured in the cost of coal, has it not? A. Undoubtedly.

5998 "Q. If an allowance were made for this, to what extent would it raise the difference in cost? A. About sixteen and two-thirds per cent.

"Q. Tell us briefly the method of obtaining washery coal? A. Washery coal, as is generally understood, is coal washed from banks that have been dumped as refuse in the course of earlier mining. A special building is erected, with screen rolls, and usually picking devices. The bank is elevated into this building en masse, and the smaller sizes, which are practically all that remain in the bank, are screened out. The term washery comes

5999 from the fact that in order to clear the previous refuse from the dirt attached, it is necessary to use very large volumes of water in washing the coal. It is a wet process, in which the coal is soaked with water, a very large volme of water poured on it in the course of making that preparation.

"Q. In many cases the banks are mined hydraulically, and sluiced to the washery, there to be elevated and passed over the screen. In other cases they are removed by either shovels or by moving conveyers; oc-

6000 casionally loaded into mine cars to take them there, but very rarely.

"Q. How does the cost of preparing that stuff from the dump, by the preparation you have described, compare with the cost of manufacturing the coal as it is ordinarily spoken of as ordinarily mined coal? A. It costs about the same, or a little more, for preparation. There is no inside cost at all. The preparation includes the picking it up from the bank. In very well located banks, where it is possible to use the hydraulic method

all the way through, the preparation cost is rather less than the ordinary preparation cost of coal mined in the colliery; but as a rule it is greater. 6001

"Q. The methods of mining in use up to the last ten or fifteen years, how were they in the matter of economy or wastefulness in view of the obtaining of the larger ultimate production from a given area? A. The older methods of mining were apparently—I know they were—laid out with a view to getting the largest amount of coal in the shortest possible time, and little or no consideration was given to the future second mining, or robbing of the mines. There was removed from the mines—and by that, don't understand me to say shipped—from sixty to sixty-five per cent. in the original first mining; with the result that the pillars left have not generally proven sufficient to support the surface without serious squeezes and crushes, and were very largely so inefficient that it is practically impossible to do any considerable amount of second mining. 6002

"By Mr. Campbell:

"Q. Which is robbing? A. Which is robbing, yes, sir, I prefer to call it second mining. 6003

"Mr. Campbell: In view of the term having been used before I would like to have that differentiation put on the record.

"By Mr. Warren:

"Q. In common parlance the second mining is called robbing of pillars? A. Yes, sir.

"Q. Although it is not a correct statement at all, is it? A. I have always objected to the term, because it is merely proper mining. I have generally avoided using the word robbing. The term robbing involved a crime, something wrong. There is nothing wrong in mining all the coal. It is something we consider very creditable. 6004

"By Mr. Campbell:

"Q. It is simply winning out the coal that has been left in these pillars? A. Yes, sir.

6005 "Q. That generally is called amongst miners, robbing? A. The term second mining is coming in very largely to use instead of robbing.

"Q. The term robbing is inclusive of what you mean when you express it as second mining? A. Yes, sir. I mean robbing in the general acceptance of the term. The modern system of mining which is coming into use within the past ten or fifteen years is almost radically different. The original removal at the present time varies from thirty-five to forty-five and at most fifty
6006 per cent., leaving pillars which are more than enough to support the superincumbent strata. When robbing, it is possible to have sufficient support to keep up the territory that you want to rob, and practically a much larger percentage of the total coal can be removed by the coming back, with strong enough pillars to hold that squeeze. To explain the technical reason for it, in removing the total support from a part of a worked over area, a very great pressure is brought from the roof on to the pillars where robbing is proceeding. If those pillars are strong enough to break off the roof the pres-
6007 sure does not extend any further, and it is possible to go on and take those pillars. On the other hand, if the pillars are so weak, that they crush down under this pressure the pillar next to the opening crushes and that brings a pressure on to the next pillars and they crush, and what is known as a general squeeze takes place. Such a squeeze may extend, and I know in my experience has extended for one hundred acres or more, ruining all the coal in that seam and territory. Furthermore the old system of mining, caused by the necessi-
6008 ties of the case in the way of selling price, presumably the necessities, and also by the desire of the operators to get their money as rapidly as possible, was to mine the larger and cheaper seams first, without regard to their location, vertically in the measures; so that taking three seams, of which the middle might have been the larger, the middle would have been mined out first, and mined out very weak, with the minimum of pillars so that when one seam squeezed the seam above it, was practically ruined. As an example of that, I was

only three days ago in the Old Twin Colliery, where 6009
there had been a very serious squeeze—it is now the
Seneca. There had been a very large squeeze in the
Middle Red Ash. The upper Red Ash, in a certain
section lying above it, was nearly three feet thick, which
was not a profitable minable seam at the time that the
lower seam was mined. The lower seam had come down
and the company were attempting to open the upper
seam. Going into this place we found that probably
sixty per cent. of the coal in this upper seam had been
crushed into a powder that you could mine out with 6010
your hands. The balance was so shattered that I did
not think it would have made any coal above stove, and
very little of that. The percentage of smaller sizes of
coal that remained would, in my judgment, have been
from sixty to seventy per cent., instead about thirty-
five. The modern system, the system that is being pur-
sued now by the large operators, is to mine out the
seams in vertical sequence without regard to their rela-
tive thickness, mining the upper seams, and leaving them
so that no squeezing of an underlying seam will affect
an upper and virgin seam. Doing the mining this way 6011
involves an enormously great increased cost of mining.
In the first place it involves the mining cost, and sec-
ondly, involves a very largely increased haulage and de-
velopments from the gangways and airways and cross-
cuts, all of which are unprofitable. Where the chambers
were formerly fifty feet centers, they are now perhaps
seventy. With every chamber worked there is an ad-
dition of twenty feet of haulage, making in a very short
time an enormous increase in the haulage cost of the
mine. There is also an increase in ventilation because 6012
the airways are cut longer, and possibly a small in-
crease in the pumping cost. The main increase, how-
ever, will be in the development, in transportation and in
pumping.

"By Mr. Warren:

"Q. Following those modern methods, which you say the largest companies are now doing, what effect will that now have on the ultimate production? A. The ulti-

6013 mate production should be increased from at least fifteen per cent., and we hope about twenty. The methods now used, as we consider, are the most scientific that we can use in the anthracite region, as far as our knowledge goes to-day, and it is being done almost regardless of present earnings, present cost. Any seam that is minable at all is being mined without pushing the large seams beyond the limits of the smaller ones. The effort is being made to remove the seams vertically, the upper seams ahead of the remaining seams below, and to draw
6014 back, or rob, the upper seam, ahead of robbing the seams following it.

"By Mr. Campbell:

"Q. This is in the way of the conservation of those deposits? A. That is the purpose.

"Q. So as to be ultimately put on the market? A. That is the purpose.

"Q. Saving that which otherwise would be lost? A. It would be as far as we know an absolute loss, and a very large amount has been absolutely lost. I believe
6015 that the Coal Waste Commission, which was headed by the late Mr. Eckley B. Coxe, reported that only about one-third of the coal in the ground had eventually gotten to market. We hope to get very nearly two-thirds of the coal in the ground to market, or better.

"By Mr. Warren:

"Q. In line with Judge Campbell's question, which was in my mind before he asked it, let me read you a sentence from page 453 of the 'Award of the Coal Strike
6016 Commission'; 'In the study of anthracite conditions, one cannot but be struck by the thought that a commodity so valuable and indispensable, lying within a small area, limited in quantity, should not be wastefully mined, and that the needs of future generations should be considered and their interests conserved.' Calling your attention to that extract, is that in line with the methods which you say have, in recent years, been adopted by the companies? A. It is; yes, sir. I might further say in connection with that, that a number of

the companies are using what is known as the method of flushing, washing in coal dirt, or ashes, or other materials, into the parts that have been mined, to protect the pillars, with the hope of being able to remove a large percentage of the pillars ultimately. 6017

"By Mr. Campbell:

"Q. That is done to a very large extent in some localities where the very thick veins are? A. Yes, sir. Several of the Lehigh Valley collieries, the collieries of the Plymouth Coal Company, some of the Lehigh and Wilkes-Barre, some of the D., L. & W. All of the collieries that have such deposits are flushing to a greater or less extent. At a great many collieries it is an actual fact that they are breaking the large refuse, pounding it to dust, and flushing it in with the culm delivered from the washeries, and attempts are even made to flush in surface dirt and sand. 6018

"By Mr. Warren:

"Q. For the reasons which you have very interestingly stated, at least to me, and because of the exhaustion of the thicker seams in the Northern Field, as to certain localities, the average thickness of the seams mined today will tell us whether that has decreased or increased materially in the past ten years? A. It has decreased very materially in the past ten years. Take for example, District No. 1, of the Lackawanna mines, which is in the Scranton district, the average thickness mined in 1900 was five feet two inches. In June, 1907, the average thickness of the seams mined was three feet eleven inches. In the Temple Iron Company, during the same years, the average thickness in 1900 was six and thirty-five one hundredths feet. In 1908, in this case, the average thickness was only three and two-tenths feet. This has involved a very great increase in what is known as yardage cost. 6019 6020

"Q. Can you give me a statement of that, and illustrate it so as to show the comparative increase in cost in view of the various thicknesses of the seams? A. Yes, I think I can. Possibly I should explain what yardage is.

6021 "Q. Yes, do that. A. The miner is ordinarly paid by the mine car as a unit of price. Where he has to remove roof, or take off bottom, and bring his mine car into his chamber, he is paid a price for the removal of rock. That price is usually fixed, based on removing one inch thick for one yard, the distance of his chamber, and known as an inch a yard. The price for that varies from five and a half cents, as a minimum, to eleven cents in the hard sand stone covering some of the Red Ash seams, as a maximum. Furthermore, where the rock
6022 is unusually difficult, or where it has to be loaded out, there is a further price paid the miner in direct yardage per lineal yard the distance of his chamber. That price is not regular, and is usually figured to be sufficient to bring his wages up to the minimum wage paid the company miners, and that is known as paying him on the rib or direct yardage. Ordinarily, they speak of giving him so much on the rib.

"Q. On the rib? A. Yes, sir.

"Q. What is the rib? A. The side of his chamber, so that a miner is paid first, his rock yardage, for taking
6023 down rock, and an additional price along the rib, really to make up his wage to an amount which will persuade him to work in a particularly disagreeable place. The regular yardage allowance is dependent on a number of items, but, taking an example of a twenty-four-foot chamber and a seventy-seven cubic foot car, the yardage amounted, for a five-foot seam, to about ten per cent.; for a four-foot seam, about twenty-six per cent., for a three-foot seam, about fifty per cent.

"Q. Fifty per cent.? A. Yes, over the cost of mining,
6024 additional to the cost of mining. For a two-foot seam, seventy-eight and one-half per cent. and, if a one-foot seam were mined, it would have amounted to two hundred and twenty-five per cent. The allowance along the rib is not susceptible of calculation. It is simply a personal factor, paid to keep the miner at work in places where it is disagreeable that work should be done.

"Q. Tell us, please, what you would say was the average increase throughout the entire region in 1908 as compared with 1899, of the yardage allowance. A. I

cannot answer for the entire region. For one company 6025
in the Wyoming region the average increase was fifty-six and one-half per cent., and for one company in the Lackawanna region, fifty-nine and two tenths per cent. I would judge that the increase in yardage throughout the region would probably be in the vicinity of forty per cent., between forty and fifty per cent., as I think both of those companies were rather higher than the average in yardage allowance.

"Q. What is the minimum thickness of seam that can be mined to-day? A. In the flat measure, the minimum 6026
thickness of seam which can be mined without loss varies at the different collieries, depending somewhat upon the other costs, but the range, where I have studied it, and I have studied it in a number of places, is from thirty-two to thirty-six inches, as a minimum of coal that can be mined without actual loss, and the pitching measures, where yardage is not necessary, where a thinner seam can be mined, probably down to two feet, without actual loss, possibly a little below two feet.

"Q. I asked you about the minimum seam; I meant
by seam, vein, of course. A. Bed would be the proper 6027
word.

"Q. Those seams, speaking generally, in our Northern Field do not consist—we will take a three-foot seam for instance—of three feet of pure coal, do they? A. Never, in any of the regions. The coal bed is a series of laminations of coal, slate, bone, sulphur, and often sandstone or rock. Beginning at the top of the seam you may have a piece of six inches of good coal and then a piece of bone an inch or two, and possibly more coal, then some slate. A great many of the seams have a 6028
center band of rock, often amounting to several inches. In many cases these center rocks enlarge through parts of the region and split an otherwise workable seam into two unworkable ones. An example of that would be the Marcy seam in the Seneca colliery, which I happened to be in last week and followed that splitting. The upper bench was about three and a half feet at one end of the property, with a five-inch rock divider, and about three and a half feet of bottom coal. A thousand feet from

6029 that the rock divider had risen to three feet, and another thousand feet it had risen twelve feet, eventually getting to thirty feet and, to make matters still worse, the two benches, one at the top and one at the bottom seam, had in that distance changed from coal through bone to absolute slate, so that, instead of one seam with seven feet of coal in about nine feet of seam, we had two little seams each containing less than three feet of coal with thirty feet of rock between them.

"Q. Are such conditions encountered in a given tract,
6030 associated with one operation? A. Yes. The one I have just described was on one operation.

"Q. Is that typical of conditions in the Northern Field? A. It is typical of conditions that may, and frequently do, occur in any colliery. Another example would be the two lower Ross seams in the Glenlyon colliery of the Susquehanna, where in the shaft they were together, making a seam nearly nine feet thick. A parting rock came in which eventually reached sixty feet in the same colliery and left two seams each about four feet thick, which was a very different mining proposi-
6031 tion. Another instance I could take would be the behavior of the bottom vein, known in the different parts of the region as the Red Ash, the Dunmores, or the Lee seam. Following that seam through the region, it is economically missing out at the western end of the field. For three miles—four miles—it is only found as a streak. At the Stearn's shaft of the Susquehanna, the seam has grown to about fourteen inches. At the west line of the Nanticoke property, two miles further east, the seam has grown to about four feet. Crossing
6032 the Nanticoke property the seam has continued to grow —the Nanticoke property is about a mile and a half wide—the seam has grown to eleven feet. Crossing to Plymouth, about two miles further, the seam is up to forty feet. Going north opposite Wilkes-Barre, the seam is about eighteen feet. It reaches its maximum at Plymouth. A little north of Wilkes-Barre, about at Wyoming, the seam begins to split and, at the Westmoreland colliery, which is perhaps three or four miles east of Wilkes-Barre, there are three seams, practically

unminable. As I remember, the largest is less than three 6033
feet. Going up to Pittston the middle split comes in minable again about six feet. The upper split ranges from one and a half to three feet and the bottom split of the three ranges again from one and a half to three feet. Going a little further north, the upper split disappears entirely. The middle split gets down as low as two feet, and the bottom splits to a mere leader.

"Q. What do you mean by leader? A. A mere trace of coal, sufficient to lead a person driving on it, but not sufficient to be mined. So the Red Ash seam goes, com- 6034
ing in and out; but north of Wilkes-Barre it never amounts—it is no comparison in size or value with the seam south of Wilkes-Barre.

"Q. A person then acquiring a coal tract and developing it, are there any indications of the surface of a variation such as you refer to? A. No.

"Q. Consequently to what extent does that enter into the risks of the business, these variations? A. The variations to-day are pretty well known. Originally they entered very largely into the risks.

"Q. Are the faults, the anticlinals, and the variations 6035
in the conditions of the seams known in properties today? A. Pretty well known, now, yes; but they were not known when the properties were purchased. A good many properties were purchased in the midst of good coal, in which certain seams turned out to have split, or were much thinner, in some cases absolutely missing. A very curious instance of that I saw a couple of weeks ago in the Avondale colliery, where the huge Red Ash seam, which averages there between eighteen and nineteen feet, had in thirty feet become changed from a per- 6036
fectly good coal seam to an unminable mixture of bone and slate, which mixture apparently extended over something like twenty acres on one small property of only about thirty-five.

"Q. The total acreage being thirty-five? A. The total acreage of the property being about thirty-five. There were between nineteen and twenty acres of this mixture of rock, bone and slate.

"Q. Any estimate then made by the owner, of the tonnage to be derived from that seam in that tract, be-

6037 cause of his knowledge of its conditions when it disclosed this large seam, would be somewhat deceptive as to the outcome, would it not? A. Horribly so. The seam was actually mined all around in good shape. This was a local difficulty.

"Q. Is that the only place on the Northern Field where they encounter such changes? A. Oh, no. I am simply giving this as typical of the changes in the Northern Field.

"Q. To what extent do they exist broadly, through
6038 the Northern Field, perhaps not as to that vein, but in any vein, I mean? A. Roughly, I should say from eight to ten per cent., of the coal measures were affected by faults and difficulties that will very greatly decrease, and in many cases absolutely prohibit, the mining of coal.

"Q. The superficial acreage which is owned by a company of so-called coal lands have been asked for here by the Government and furnished by the companies and put into this record, is what indication of the tonnage to be derived from such superficial acreages? A. Abso-
6039 lutely none. You take the whole Lackawanna region; it was testified during the appeal from taxes in that region that there was an average of only eight feet of coal left over the entire Lackawanna region, whereas, in parts of Luzerne County, there is as much as sixty feet still remaining.

"Q. At present prices, how much of the remaining coal, what per cent. of the remaining coal in the regions cannot be mined, in accordance with your opinion? A. I could not answer that.

6040 "Q. Can you not give us an approximation of that? A. No, I do not think I can. I do not know the amount remaining. At present prices all seams, certainly under two and a half and probably under two and three-quarters feet, are unminable without loss, and such seams may constitute fifteen or possibly twenty per cent. of the entire coal remaining; but that would be very largely a guess, on considerable knowledge of the region.

"Q. Of the regions? A. Of the regions, yes; well, I do not know as much about the southern district, al-

though it would be rather more in the Shamokin district 6041
than less. There are a great many small seams there. In the Cameron colliery, we mined or opened seventeen different seams.

"Q. Now, I want to ask you to take up the question of preparation and differences in the methods adopted in the recent years as compared with those in the older days and, before doing that, I would like to have you tell us, if you know, the defference in the preparation and in the cost therefor of mining and preparing for market the bituminous coal as compared with anthracite. A. Bi- 6042
tuminous coal has no preparation, properly so called. The coal as mined is frequently, and I think I can say usually, sold as run of mine, the entire mine car being dumped directly into the railroad car and sold. In some instances, especially with the coking coal, it is passed over stationary screens and two or three sizes made. There is very little picking, in most cases none and, as far as preparation is concerned, you can practically say that there is no preparation, as compared with anthracite coal.

"Q. What is the difference between the two kinds of 6043
coal in the methods of mining them? A. A very large part of the bituminous coal at present is mined by what are known as machine methods; the seam being undercut or side-sliced, to give a loose end to blast off the coal, requiring very much less powder and making a very, very much larger output per man. There are two types of undercutting machines, both power-driven; one of them in the form of a punching chisel, which cuts a V groove beneath the coal, and another, an endless raking chain, which cuts a flat groove. That gives the miner a 6044
loose end to blow to, so that a relatively very small amount of powder will displace bituminous coal as compared with anthracite and the cost of mining bituminous coal is very much less than the cost of mining anthracite.

"Q. Speaking of powder, to what extent has the use of powder increased in the last ten years in anthracite mining, and what effect has that increase, if it exists, had upon the wasting, or, at any rate, upon the reduction of

6045 the sizes of the coal from prepared sizes, so-called, to sizes below? A. I do not know the percentage of increase in the use of powder, but I do know from observation that the miners are charging very much more heavily than they used to and that they are blowing a great deal more coal into finer sizes. Further, during my own experience, the black powder has been very largely supplemented, and in many cases, replaced by dynamite. That is due partly to gaseous conditions and partly to thinner seams and larger amounts of rock to handle, so
6046 that, when I first came into the region, the dynamite amount was very small as compared to the black powder. My last personal knowledge of it was while I was chief engineer of coal companies for the Pennsylvania; the dynamite has very much exceeded the black powder in use at the collieries.

"Q. The use of dynamite, as compared with black powder, has what effect upon the shattering of the coal? A. The dynamite shatters very much more than black powder. On the other hand, it is a safer explosive to use. There is less liability to fire gas with it and in
6047 many mines now the modern safety explosives are being used to the exclusion of both dynamite and black powder; in extremely gaseous mines, both in the anthracite and bituminous mines, there is quite a large amount of the so-called safety explosives, or non-flaming explosives used.

"Q. The mining of the dirtier and thinner seams, as well as market requirements, has involved what in the matter of the methods of preparation in the anthracite region? A. It has remodeled the methods of prepara-
6048 tion. The larger seams were not only larger, but cleaner. It seemed as though, in the arrangement of the coal measures, it was intended that we should mine the big seams and leave the little ones, because the big seams were, generally not merely larger, but very much less stratified with rock, and what strata of rock there were, were usually loose, that is, with partings above and below them, so that the rock would drop loose from the coal with a minimum amount of work. In the small seams, on the contrary, the rock and bone is, in very many

cases, what we call burned together; that is, there is no 6049
parting, and the break will occur as readily through the coal as through the rock. This has involved loading a great deal more rock mixed with the coal than was necessary even ten years ago and a very much greater amount than was necessary twenty years ago when I first became familiar with the region. The result has been to modify the breakers, both in increasing the screening capacities and in increasing the picking capacities, and in the employment of a very large number of mechanical picking devices to remove the refuse from 6050
the coal, such as jigs, or spirals, or slate tables, and numbers of patented devices, so that a modern breaker will, instead of having one hundred or one hundred and fifty boys picking rock out of the coal will have fifty or sixty jigs or spirals picking very much larger amounts of rock out of the coal. It has also involved a great many rolls to break down the pieces where coal and refuse have stuck together, which, in the very large sizes, are separated by hand, but in the smaller sizes cannot be economically so separated and are crushed down to a smaller size and put through another preparation with a 6051
view of recovering an amount of coal which will otherwise go to the refuse bank sticking to the piece of refuse.

"Q. Which has done what in the way of adding to the waste? That is to say, the utilization of these thin, dirty, laminated veins, with this character of burned-in partings? A. There is a large waste in them, but I do not think very much larger, because the automatic picking is very much more accurate than the hand picking and the possibility, within reasonable limits of cost and within the possibility of obtaining pickers—as you can buy 6052
all the mechanical pickers you want and you cannot always buy all the live slate pickers you want, for they do not grow them fast enough——

"Q. It has done one good thing, it has reduced the amount of child labor in the collieries, has it not? A. Very largely indeed.

"Q. Which, by-the-bye, is the most inexpensive labor to the operator, is it not? A. Yes; but I could not say that the mining of small seams has increased the waste.

6053 I think that, with the modern preparing devices, it has rather decreased than increased, as it is possible now to pick out a piece of egg coal, for instance, which with hand picking would have gone directly to the dump, send it to the rolls, recrush it and try it again in a smaller size by automatic picking and perhaps get a piece of nut and a piece of pea out of it, with a couple of small pieces of rock; so that the refuse from the breakers is, I think, cleaner than it was in the earlier methods of preparation.

6054 "By Judge Campbell:

"Q. The idea is that you win out for the market a little more coal by those processes? A. I think so.

"By Major Warren:

"Q. But, while you win out a little more coal, that increased winning is in what sizes? A. In the smaller sizes.

"Q. That is, below prepared? A. Yes, but we win out a certain amount of coal which would otherwise
6055 have gone on the dump heap, and which is now on the dump heap being handled by the washeries, from the older operations.

"Q. The investment in preparing machinery, or in machinery used in the preparation, has increased what in the last ten years? A. Two or three hundred per cent. The cost of replacing the breaker boys has been very great. The mechanical picking devices are expensive and very expensive to maintain. The jigs, which are the most efficient, are unpatented, but ex-
6056 tremely costly to maintain. The spirals and slate tables are patented, and the cost is very heavy; but, while they are costly to maintain, they are not nearly as costly as the jigs.

"Q. Taking into account the saving of the wages of the labor replaced by the mechanical contrivances on the one hand, and the cost of the mechanical contrivances on the other, the net result is an increase in the preparation cost to what extent? A. I could not give the percentage. The labor cost of preparation varies

from about even to perhaps about twenty per cent. in- 6057
crease during the past ten years, but I would have no means of averaging in the additional cost of machinery. With the additional cost of machinery, however, the labor cost has not decreased, and in many instances, has increased.

"Q. Notwithstanding the introduction of mechanical contrivances? A. Notwithstanding the introduction of mechanical contrivances.

"Q. It is certain, then, that the introduction of the mechanical contrivances has not resulted in an economy, 6058
although it has replaced labor cost to some extent? A. Oh, yes, it has resulted in a very great economy, because of the coal that we have now to pick, it would be impossible to pick the coal we have now with hand labor.

"Q. But you do not quite understand my question. As compared with ten years ago, you have told us that they now have introduced these various mechanical contrivances, jigs, spirals, and so forth, and you have said that has done away with the child labor that used to do the picking? A. To a considerable extent.

"Q. What I want to get the fact about, whichever way 6059
it is, is this: Has this introduction of the machinery, thus relieving you from some child labor, has it relieved you enough so that the net cost is about as it was ten years ago for preparation, or has it added to it? A. The net cost for preparation is a little higher than it was ten years ago.

"Q. Do you include in that answer the cost of buying this machinery? A. I do not. That is what I was going on to say.

"Q. Please include that then. A. I cannot. 6060

"Q. Can you give me any figures as to what these things cost that they now put in breakers, these jigs? A. Yes, they have increased the cost of a breaker from $100,000 to $150,000 or $200,000; but it will be an almost impossible task to put that into percentage.

"Q. What about pumping and ventilation in the last ten years as to amount and as to the increased cost, if any? A. The pumping of a colliery, outside of accidents, such as breakage of the strata into water bearing

6061 strata, or into the river, would naturally increase approximately with the extent of the workings. The ventilation would increase, not directly as the extent of the workings, but as some function of the extent. It is plain to see that there is no reason for more infiltration of water at one point than another, barring accidents; but, with ventilation, the gases gradually exhaust themselves in the older workings and a relatively less amount of air is required to properly ventilate old workings than is required in new ones. Therefore, the ventilation will
6062 not increase directly as the workings extend, while the pumping would naturally do so. The labor cost of both ventilation and pumping has increased in proportion as these have increased, as well as in proportion to the increased cost of labor, which I have previously explained.

"Q. The cost of pumping has increased, on an average, what per cent. would you say in the last ten years, in the Northern Region? A. The cost of pumping, on the average of a number of collieries in Luzerne County, increased sixty-four per cent. during the past ten years.
6063 On one colliery I know of, it increased seven hundred and sixty-five per cent. That was due to the workings passing under the Susquehanna River and getting a very large and permanent increase of water from that source. The total pumping of District No. 2 of the D., L. & W., which I was able to obtain for the year 1908, was 2,998,071,200 gallons, amounting to above five tons of water, pumped approximately five hundred feet vertically, for each ton of coal hoisted. To go back to one of the other regions, the Lykens Valley Coal Company has
6064 been noted as possibly the wettest colliery, possibly the record wet colliery. We pumped there, in a number of years, forty tons of water for every ton of coal hoisted, and that was largely pumped from eighteen hundred feet vertically. It was pumped by slopes, but there was eighteen hundred feet vertically.

"Q. District No. 2 of the Lackawanna; where is that? A. That comprises the Hyde Park, Sloan——

"Q. In other words, certain collieries in the vicinity of Scranton, in Lackawanna County? A. Yes. I could give you the names of the collieries.

"Q. Ventilation has increased what? A. Ventilation 6056
in the Wyoming Region has increased about thirty-four and one-half per cent. in cost.

"Q. What capital expenditure is required in the mines and utilized in the mines in the last ten years for the more modern and economical pumping machinery? A. I could not give you the amount nor the cost per ton, but the larger companies have, during the last ten years, replaced a very large number of their old, uneconomical pumps with higher grade pumps. In the Lykens Valley colliery alone, which was done under my supervision, 6066
we put in eight compound condensing twelve-inch plunger pumps, which cost in the vicinity of $10,000 a piece, installed, and to replace the entire pumping plant of the colliery we spent about $80,000 or more, on the pumping plant. That was done since 1902. I think the estimate of $10,000 a piece installed is low, rather than high. The pumps themselves as I remember, cost about $7,500, and I have never had access to the figures for the pump rooms, but an estimate of $2,500 for each pumping room would be low, rather than high.

"Q. How many mines in the Northern Field, with 6067
which you are familiar, are there that do not have to have any pumping? A. None.

"Q. Therefore universally they have that as an item of expense to some extent? A. There may be two or three very small individual operations that have no pumping, but I am not personally familiar with any mine which has no pumping.

"Q. Now the item of transportation, and I mean by that transportation in the inside workings, as a factor entering into the mining cost of coal; I want to ask you 6068
something about that. To what extent, if any, has that increased in the last ten years? A. The average of a large number of collieries in the whole Northern Field is forty per cent. increase. The largest increase that has come under my knowledge is one hundred and four per cent., in one colliery, and that despite the fact that very great economies have been made by putting in electric and air haulage, replacing mule haulage. The saving in putting in air haulage in the Glenlyon colliery,

6069 which was put in under my supervision, was sufficient to pay for the entire installation in about a year and a half; but, even with that, the extent of the workings is increasing so rapidly that the total cost of inside haulage has increased on an average about forty per cent. in the past ten years. It probably is a fact that it would have been impossible to handle some of the long runs with mules, and mine seams anywhere near the size that are now mined.

"Q. Do they extend into the chambers, this electric
6070 haulage and air haulage? A. Only rarely.

"Q. How do they get the cars from the face of the chambers down to the main gangways? A. In some instances they are run down by gravity and others collected by mules.

"Q. How do they get them up, if they are run down by gravity? A. They are pulled up by mules almost invariably. In some few instances the electric haulages are provided with reels, by which a special cable is connected to the power cable in the gangway, and the motor goes off, paying off this cable and re-reeling it as it re-
6071 turns; but that is more used for taking branch gangways or counters than for going into the actual chambers. To a small extent, I believe electric gathering motors are going into the coal chambers, although it has not come within my personal observation.

"Q. Are these electric locomotives expensive? A. They cost about $2,800 each.

"Q. How many do they have in a coal operation? A. It varies from one to—I think there are fifteen inside some collieries.

6072 "Q. How about the maintenance of them and repairs? A. The maintenance and repairs are not very high.

"Q. How about the labor cost of those? Who run them? Is it skilled labor? A. Yes, it is a better class of labor than mule driver. I would call it semi-skilled labor. Of course, a large electric installation, to run electric motors, requires at least one highly skilled man to attend to the electric end.

"Q. Where is the electric end of this electric haulage? A. Each colliery will have to put up an electric plant, or

buy their power, which they rarely do. In some few instances, the Lackawanna in two instances and I believe the Delaware and Hudson in one, have put up central power plants to serve a group of collieries. 6073

"Q. These plants at the colliery operations, or where they use them in group collieries, in the matter of service, are they expensive or otherwise? A. The central power plants are very expensive, but, of course, more economical in operation. The individual power plants are moderate in cost. The engine and generator costs about, I think, forty dollars a kilowatt. 6074

"Q. What has this necessitated in the matter of the steam plants connected with the breakers, in the way of enlargement or otherwise? A. The steam plants have been quite materially enlarged and further, further, during my experience in the region, there has been a practically complete reorganization of the steam generating practice. In 1886, when I came to the region there were a few locomotive and return tubular boilers, and probably eighty-five or ninety per cent. of the total steam was generated in plain cylinder boilers. To-day it is very nearly reversed, and I would judge eighty or 6075 eighty-five per cent. of all the steam in the region is generated in horizontal high grade boilers, and probably not over ten or fifteen per cent. in the old cylinders. That means an economy; the difference is an economy of using practically half the coal for a given amount of steam under the newer boilers, as compared with the cylinders.

"Q. But what is the difference in the cost of the two? A. There is not a very great deal of difference in the cost installed. The boilers cost very much more, but they are 6076 so very much more compact that the houses and steam connections cost less, and the additional cost for putting up a high grade plant is probably not over twenty-five per cent. greater than putting up a cylinder plant. In many cases, it is no greater.

"Q. Are not the modern plants, such as are used within the last ten years very much more extensive than the ones that were in use? A. Certainly.

6077 "Q. That is, more boilers, I mean, are used? A. No, you do not mean more boilers, you mean more horse-power.

"Q. Yes, that is just what I mean. A. Yes, a great deal.

"Q. Boilers cost more in proportion to the horse-power, do they not? A. Certainly. My statement was not clear. I should say the cost per horse-power of a modern plant I do not think exceeds more than twenty-five per cent. the cost per horse-power of a plain cylin-
6078 der plant, complete installed.

"Q. What is the difference in the number of horse-power, that is what I want to get at? A. That is a constant increase at every colliery. To give an example, perhaps, at Williamstown colliery in 1886, I think there were forty cylinder boilers good for about fifty horse-power apiece, or two thousand horse-power. To-day at the same colliery, there are eighty-six hundred horse-power of high grade boilers.

"Q. To what extent has the use of fuel at the collieries increased in the last ten years? A. It has increased ma-
6079 terially. I have not, except in one instance, any definite figures for the amount, but, as the pumping, ventilation and haulage, and the uses for steam increase, the fuel is bound to increase, and it has. In one instance, in the Seneca colliery, the fuel has increased from six and eight-tenths per cent. in 1902, to thirteen and three-tenths in 1905. Those were figures that I obtained several years ago, in connection with the study of the fuel problem at that colliery, and I have no others to give.

6080 "Q. Can you give me the ranges of the per cent. of the total production of collieries utilized for steam purposes? A. That was the range at Seneca.

"Q. Can you give me one that would be a fair average for the region? A. There is a general assumption that seven per cent. of the total output of the region is used for steam purposes. I think that was probaly correct, seven or eight years ago, but that it has now increased materially. It is nothing more than a personal opinion, however, to say that it would figure probably at least ten per cent. to-day.

"Q. Would you say that the operating costs, the executive costs and the selling expenses—on which the cost of coal is usually stated, is it not? A. No. 6081

"Q. Would you say that those represented what is usually embraced in the cost of handling anthracite coal? A. No, the figures that are available to me at least, are based on colliery expenses. The executive expense and the selling cost and such items are not included in the figures that have been available to me.

"Q. I grant you that, but just the same you recognize that they are an item of cost? A. Certainly. 6082

"Q. That was my question; that, among the items of cost for mining and preparing anthracite coal for the ultimate consumer, must be figured, not only those which you have now covered, but the executive costs, that is general salaries and things of that sort, and selling expenses, if there are any, must there not? A. Yes; also storage expenses; the depreciation of lands and depreciation of machinery and breakers; sinking fund, to cover exhaustion of lands; and further, I think there should probably be included a special sinking fund to cover accidents and catastrophies. 6083

"Q. How about insurance? A. Insurance is ordinarily covered in the colliery cost.

"Q. How about taxes? A. That is ordinarily covered in the colliery cost, as is royalty.

"Q. Speaking of accidents and catastrophies, is the anthracite mining business more than usually subject to such? A. Yes; it is distinctively a dangerous business. The mines are not merely subject to accidents and catastrophies, but they are really to be expected in the course of human events. 6084

"Q. They cannot be prevented, in other words A. We spend very large amounts of money in attempting to prevent accidents and catastrophies.

"Q. But do not succeed? A. But there is not a company, and hardly a colliery, during my twenty-five years' experience in the field that has not had more or less serious accidents, many of which might have been considered actual catastrophies—fires, floods, explosions, squeezes and caves are of common and ordinary occur-

6085 rence, as of natural course in the business of mining coal.

"Q. Are collieries sometimes absolutely lost, due to such accidents? A. There have been quite a number of collieries actually lost. The West Nanticoke colliery of the Susquehanna Coal Company was abandoned some fifteen years ago on account of a squeeze which brought in the Susquehanna River to such an extent that pumping at that time was impracticable, financially impracticable. The Summit Hill colliery of the Lehigh Coal and Navigation Company was fired, I think in 1848, and
6086 is still burning. The Twin colliery, now the Seneca colliery, lost the great bulk of its workings from a squeeze in which a number of men were buried, and the Nanticoke colliery lost nearly one hundred acres of its bottom seams by a large squeeze. The Cameron colliery was flooded out for two years, by reason of a mine fire. I can go on indefinitely in that.

"Q. And you can come up into the Lackawanna Valley for a moment and recall, can you not, within a year the loss of many acres of coal in one of the Lackawanna operations, in Hyde Park, due to a squeeze? A. Yes.
6087 There has been a very serious squeeze in the Hyde Park colliery.

"Q. These accidents of various kinds and catastrophies involve what cost? That is, it ranges between what figures? A. It ranges from a fire that costs a few hundred dollars to put out and repair, to a catastrophe that costs——

"Q. The colliery? A. Costs the colliery, costs anywhere from a quarter of a million to a million dollars. The cave-in at Nanticoke in 1900 cost over $200,000 to
6088 repair. The fire in the Cameron colliery about 1891 or 1892 cost nearly half a million, before it was put out, and the colliery put in operation again. The Lehigh Coal and Navigation fire that I referred to is reputed to have cost over a million, and it is not out, to say nothing of the loss of coal.

"Q. Do you know when the first mechanical storage plants were built? A. Yes. The first mechanical storage plant that was built within my knowledge, was built for the Pennsylvania Railroad at South Amboy, in 1889.

"Before the construction of these storage plants, how 6089
were these sizes that Mr. Connell referred to as the operators being long in, that is to say, the sizes that could not for the time being be marketed, taken care of? A. They were largely taken care of by stopping the mines. When they did not have sale for any particular size, a certain amount of coal was stored on the wharves at seaboard and in piles around the mines. This involved a percentage amounting to at least ten per cent., and, as near as I have been able to get at it, the average cost of handling was fully twenty-five cents a ton or 6090
more, not including the loss of coal in breakage.

"Q. Then, up to the time of the invention and installation of these modern mechanical handling plants, the working time at all collieries was necessarily broken? A. I believe that to be the case. Within my own experience, that was the case.

"Q. What is the function of a modern storage plant? A. The function of a modern storage plant is to act as a balance wheel to a group of collieries, or to a direction of transportation. Its operation is to put into temporary storage the sizes on which that group of collieries 6091
is long at the moment and to permit the collieries to continue in regular operation and the market to absorb the sizes which, for the time being, it is willing to take.

"Q. I assume it enables the person having such storage plant to withdraw the coal thus stored and put it into the hands of the consumer when the demand comes? A. That is the purpose of the plant.

"Q. Do you know, among the peculiarities of the market, the fact that there are certain sizes that are in greater demand at certain times of the year than others 6092
and indeed certain sizes that are without any demand for them at certain seasons? A. Yes. That is the normal condition of the anthracite business, as I could see it from the operating end.

"Q. What storage plants do you know the existence of, where are they located, what familiarity have you with them, and what is their ton capacity? A. Do you want me to give an entire list?

"Q. Yes, sir. A. The Reading has a Dodge plant at Abrams, containing eight piles, each with a capacity

6093 of 60,000 tons, or 480,000 tons total, which was built in 1905. I am familiar with the drawings of this plant, but have never seen it. They have a Dodge plant at Port Richmond, installed in 1905, which has a capacity of 180,000 tons. I have seen the plant, but am not able at the moment, to remember the details of the piles. Then a Side Hill plant at Mahanoy City, which has a capacity of 150,000 tons, about. They also have a side hill plant at Landingville, which, when I examined it in 1899 or 1900, had a capacity of 300,000 tons. That
6094 plant has since been enlarged, but I do not know to what extent. The Lehigh Valley Coal Company have a Dodge plant at South Plainfield, with a capacity of 310,000 tons, built in 1891. I have examined the plant thoroughly. A plant at West Superior, Wisconsin, a special type of covered storage, built by the Dodge Company in 1894, capacity 100,000. I have examined that. A plant at Ransom, known as a traveling trimmer plant, which I built in 1906, and has a capacity of 400,000. A plant at Black Creek, a side hill and cantilever trim-
6095 mer type, with concrete floor and hydraulic discharge, with a capacity of 225,000 tons, which I built for them in 1906. A plant at Wende, New York, of a special type of central trimmer and tunnel conveyor recovery, with a capacity of 100,000 tons, built in 1906, which I saw several times during the course of construction and was consulted on the drawings. A bin and tunnel plant at Perth Amboy, with a capacity of 200,000 tons. I have examined the plant; I do not know the date of erection. A bin and tunnel plant near Buffalo, with a capacity of 100,000, which is of old construction. I have also ex-
6096 amined that. A special plant at South Chicago, similar in general to the Wende plant, built in 1907, with a capacity of 135,000 tons. I have seen the drawings of this and saw the plant in course of construction, and was also consulted in regard to its design. A plant at Milwaukee, Wisconsin, similar in general to the South Chicago plant, built in 1907, with a capacity of 75,000 tons. The Pennsylvania Railroad and Susquehanna Coal Company have a Dodge plant at South Amboy, which was built in two sections, 100,000 tons in 1889 and 90,000

tons in 1902. I have seen both plants and was engineer 6097
of the Susquehanna Coal Company during their erection. They were not, however, erected under my personal charge. A plant at McClellan, erected in three sections, 210,000 tons in 1901 by myself, 170,000 tons in 1905, and 100,000 tons in 1906, both on my plans and under my general supervision as consulting engineer. A plant at Old Bridge, of 210,000 tons capacity, built in 1907, about which I was consulted in regard to the design and have seen the drawings, but I have not seen the plant. The
Central Railroad of New Jersey and Lehigh and Wilkes- 6098
Barre Coal Company have piles at Hampton Junction, a Dodge plant, with a capacity of 180,000 tons, erected in 1890, and an extension to the same of 300,000 tons capacity, erected in 1905, both of which I have seen. Also a plant at Salem, Massachusetts, with a capacity of 80,000 tons, erected in 1890, which I have not seen. The Erie has a plant at Buffalo, with a capacity of 165,000 tons, erected in 1896, which I have fully examined. Two plants, or one plant with an extension, at Rochelle Park, 150,000 tons capacity, erected in 1901, and 50,000
tons in 1904. A plant at Hammond, Indiana, of a spe- 6099
cial type, covered, with capacity of 60,000 tons, erected in 1900, and I believe a side hill plant near Scranton, with a capacity of about 120,000 tons. Except the Buffalo plants, I am not personally familiar with those. I believe the Erie also has a plant at Hawley, of which I have no record. The Pennsylvania Coal Company had a plant at Newburgh, with a capacity of 80,000 tons, erected in 1897. This was a combination of side hill and Dodge type plant. I am familiar with the drawings, but
have not seen the plant. The Lackawanna has a plant 6100
at Scranton, Dodge type, built in 1904, capacity 100,000 tons, two 50,000 ton piles, with which I am perfectly familiar. Also a plant at Dover, New Jersey, of the same capacity, built in 1906, which I have never seen. The New York, Ontario and Western has two plants at Middletown, one of 120,000 tons capacity, of the Dodge type, built in 1901, and one of 60,000 tons of the same type, built in 1907. The Lehigh Coal and Navigation Company have a Dodge plant of 240,000 tons capacity,

6101 built in 1908, at Hauto, on which I was employed by the Dodge Company as consulting engineer in the design, although I have not seen the plant since it was completed. The Delaware and Hudson has a plant at Carbondale of the Dodge type, erected in 1899, of 150,000 tons capacity, which I have seen, and one at Delanson, New York, of 120,000 tons capacity, erected in 1889, my notes say, but I think those last two figures are reversed. There is also a plant erected by Coxe Brothers, at Roan, Pennsylvania, of the traveling bridge type,
6102 which had a capacity of about 180,000 tons and was erected about 1900. That has since been enlarged, but I do not know to what extent. I have also erected several plants for large dealers, which are more yard plants and handling plants than storage plants, notably plants for Boyd, Stickney & Co., at Chicago, which had a capacity of 30,000 tons, and a plant for the Staples Company at Fall River, which had a capacity of handling about 1,500 tons a day, and a storage capacity, as I remember, of about 25,000 tons.

6103 "Q. The makers of these plants, do you mean to refer to them when you speak of Dodge? A. Yes.

"Q. The builders, in other words? A. Yes, they are built under the Dodge patents.

"Q. You have not given the aggregate capacity of these several plants, have you? A. I have not given it.

"Q. So that we could ascertain what per cent. of the total production of the companies they carry? A. The Reading plants, as I know them, although the Landingville has been enlarged, had a capacity of 1,110,000 tons, or about eight and eight-tenths per cent. of their
6104 1908 production. The Lehigh Valley a capacity—not including the Roan plant—a capacity of 1,645,000 tons, or about fifteen and three-tenths per cent. of their production. The Pennsylvania Railroad and Susquehanna Coal Company, 880,000 tons, or fourteen and six-tenths per cent. of their production. The Central Railroad of New Jersey, 560,000 tons, or nine and four-tenths per cent. The Erie and Pennsylvania Coal Company together, 565,000 tons, or seven and six-tenths per cent. The Lackawanna 200,000 tons, or two per cent. The New

York, Ontario and Western, 180,000 tons, or six and 6105
four-tenths per cent. The Lehigh Coal and Navigation Company, 240,000 tons; their output was not available when I made this out. The Delaware and Hudson, 270,000 tons, or four and two-tenths per cent. of their production.

"Q. These storage plants have cost on an average about what per ton capacity? A. I would say one dollar and fifty cents, from personal knowledge, as a general average. The range of price has been from a little over a dollar to two dollars and twenty-five cents for the me- 6106
chanical handling plants. There should be added to the capacities of these mechanical plants, the capacities of the various storages which are not mechanically handled, on piers and in yards, on which I have no data.

"Q. Do you know of the prices of other commodities as to whether they have advanced in the last ten years? A. From general knowledge, I know that they have advanced materially.

"Q. Can you state, in view of the increase of labor, 6107
material and the necessities of life in the last ten years, whether coal has increased in a greater ratio in the price which it has secured? A. I think it has increased, if anything, in a less ratio.

"Q. I read from the bottom of page 452, from the 'Award of the Strike Commission,' a single sentence: 'Owing to its (speaking of the coal beds), owing to its gradual exhaustion and the consequent greater expense of mining poor veins and the increased labor cost due to higher wages, the tendency of the price of anthracite coal is probably upward.' Has that been borne out by 6108
the development since that announcement was made by the Strike Commission in March, 1903? A. It has been, to the best of my knowledge. I know that the cost of production has been upward. I am only familiar with the cost of selling by incidental notes in the trade papers.

"Q. In your opinion would it be better for the country if the prices were higher, because then veins which you have already told us could not now be mined, might be mined and thus more of the coal gotten to market? A.

6109 There is no question that, with a higher price, thinner veins could and would be mined, as there is every incentive to mine to the limit of financial possibility and to conserve the largest possible amount of coal for the future.

"Q. In your judgment, then, it would be advantageous? A. It would.

"Q. To what then, do you attribute the increased price of coal to-day over the prices prevalent say ten years ago? A. To the increased cost of production.

6110 "Q. Economic conditions? A. To the economic conditions and the increased cost of production; also to the fact that the capacities of the present collieries have been practically reached and that, in order to maintain their present perfection, it is necessary to mine very much thinner and more costly seams.

("Counsel for the Government objects to this whole examination, upon the ground that the matter adduced is utterly immaterial and sheds no light whatsoever on any issue involved in this case.)

6111

"Cross-Examination by Mr. McReynolds:

"Q. Can you tell us what was the labor cost per ton for mining anthracite coal in the three anthracite regions, say in the year 1898 or thereabouts? A. The general average in 1898 would be in the vicinity of one dollar a ton.

"Q. In 1900, what was that general average? A. I can not follow you by years, because I have only looked up the two ends. The jump in 1900 would probably be

6112 about ten per cent., but I could not follow it in detail.

"Q. There was an advance in 1900 of ten per cent.? A. There was an advance in 1900 of ten per cent. in labor cost and I judge it would make about that difference in the total cost.

"Q. I am confining this part of the examination to labor cost. A. I know you are. I say in the labor cost there was an advance of ten per cent. in the wages, and I judge it would make an advance of ten or eleven per cent in labor cost.

"Q. So, just prior to the advance of 1900, the total labor cost, taking an average in the Northern Region, you think was about one dollar per ton? A. I think so. That would be my judgment. 6113

"Q. Subsequent to the advance in 1900 it was about one dollar and ten cents per ton? A. I would judge so, although I have no figures to back it up.

"Q. So an advance of ten per cent. to the laborers made an increase of about ten cents per ton? A. Ten or eleven cents a ton, I would judge.

"Q. Since 1900 do you think the price of labor has further increased? A. I know it has. There was another increase in 1902. 6114

"Q. Of how much? A. There was ten per cent., and a sliding scale which averages about four per cent.

"Q. So since 1900 then, the price of labor has increased about fourteen per cent.? A. Yes.

"Q That would add, both of these things together, about twenty-four cents to the price? A. No, it has added more than that, because of the necessity of mining thin seams, which has come in between, in the Northern Field, in between 1898 and 1908. 6115

"Q. That advance would have occurred without any increase in the miners' wages, would it not? A. It would, to a certain extent, yes.

"Q. What I am trying to get at is, these two advances of ten per cent. have added per ton, themselves, about twenty-four cents, have they not? A. They have added probably a little more than that, because of the decrease in the amount of work done by the individual miner.

"Q. How much has the price of coal increased since the Fall of 1900? A. I do not know. That has not been my end of it. 6116

"Q. What is the present average total labor cost per ton for producing anthracite coal in the Lackawanna region? A. In the Northern Region, the Northern Coal Field, which is the Lackawanna and Luzerne region, I would say it would average about one dollar and fifty cents."

6117 By Mr. Wheaton:

Q. Now, Mr. Norris, in the short time that has been alloted to you since you knew you were to be a witness in this case, what have you done, and what conclusions have you reached as to the continuance of the conditions and facts testified to by you in the old Reading case down to the present time? A. In regard to the decreasing efficiency of labor, as shown by the decreasing coal mined per man per day, or per man per hour, I had not time to check up the entire Northern Field, as I did be-

6118 fore, but took one company, the one with the fewest collieries, the Lehigh and Wilkes-Barre, and checked them up to 1912 or at the time of the last mine inspectors' report as published. It showed a decrease from 1907 of 3.13 per cent. in tons produced per hour per miner, and 18.71 per cent. in the tons produced per employe per hour. That is for the Lehigh & Wilkes-Barre Coal Company.

Q. So that the condition of inefficiency which you testified to in the old Reading case has not only continued since that time down to the date of this checking up, but

6119 has increased, has it not? A. It has increased, further from the mineral resources of the United States I calculated the tons per man per day, that is total employes per day.

Mr. Machen: From the mineral resources?

The Witness: Mineral resources of the United States. That is a government document. Taking their table in the 1901, 1904, 1907 and 1912 reports, showing the production of anthracite, the number of employes, and the days worked each

6120 year, the tables being for a number of years time in each report, so that those four reports covered up to 1912. From that I calculated the tons per man per day, and find from 1899 to 1907, a decrease of 8 per cent.; from 1907 to 1912, a further decrease of 10.6 per cent., making a total decrease from 1899, the date which was used in the previous testimony, to 1912, the date of the last available statistics, of 18.6 per cent. of decrease in tons mined per employe per day.

Q. Now, generally speaking, as to the other portions 6121
of your testimony, are they as correct of conditions that prevail to-day as they were when you gave that testimony? A. Yes, except that many of the conditions have been accentuated in the later years. The interference with work by the continuous button strike, etc., in the region, have accentuated the conditions, or made them worse. To show you what that decrease in efficiency means, there were 174,000 employes in the region in 1912. The decrease in tons per employe per day, is from 2.23 tons in 1899 to 1.88 tons in 1912, a decrease of 6122
.35 of a ton per employe per day. Applying that on the 174,030 employes is 60,910 and ½ tons per day loss.

Q. Well, in round figures, what does it cost per day to shut down a breaker? A. From $1,000 to $3,000, depending upon the size of the colliery. Your pumping and ventilations, and all your over-head expenses go on just the same as though you were operating, steam expenses, and everything of that sort continues.

Q. Is the mining and production of anthracite coal as a business an extraordinary hazardous business, by that I mean not only hazardous to person and property, but 6123
hazardous from the financial standpoint? A. Yes, it is a very hazardous business from a financial standpoint. There are a great many possible and probable accidents —floods, fires and explosions.

Q. Well, now, I am going to ask you in answer to my next question, to go on in your own way and describe a typical, a fairly typical anthracite operation, and to enumerate the ordinary, common and usual risks that always accompany and attend that business. A. Well, a normal modern anthracite operation would in the first 6124
place, require approximately 500 acres of coal land to furnish a sufficient assurance of a supply to warrant the installation of the necessary development and equipment for operation. It would consist, as ordinarily, of two shafts at least—one hoisting shaft, and one second opening required by law, which, in the Northern Field, would probably be at least 1000 feet deep. There will have to be installed at least two large ventillating fans, a boiler plant of approximately 3000-horse power, four or five

6125 pairs of hoisting engines to each breaker, the houses at least for the bosses and, in many cases, for the employes; shops and barns, the shafts will have to be equipped with head frames, ropes and cages; a very large number of mine cars are required, which cost something over $100.00 apiece, and the whole cost of a modern operation is now well on toward a million dollars before it begins to produce coal in appreciable quantities, and the time, taking the Loomis colliery of the D. L. & W., which is now being built, is about 6 years for equipment and de-
6126 velopment to enable it be in operating condition. We started the Loomis about four and a half years ago, and it will be a year and a half yet before the breaker will be finished, and producing coal.

Now, as to the accidents, we have in the first place fires both on the surface and in the mines. Mine fires are extremely dangerous and expensive possibilities, and, I could almost say probabilities, for nearly every mine in the region has had more or less mine fires. They range from minor fires, which may cost a few hundred dollars to extinguish and repair the damage, to the great fires
6127 which have cost from one hundred thouand dollars to a million dollars. Probably the most expensive fire in the region is the Summit Hill fire, which started in 1868 and is still burning. The Lehigh Coal & Navigation Company have spent, I was informed by their president Mr. Lathrop, over a million dollars to date in attempting to control the fire. It is not extinguished, and that does not include the large amount of coal which has been sacrificed to the fire. In my experience the Cameron colliery in 1889 was fired from the overturning of a lamp
6128 in a return airway. It was necessary to flood the colliery. It was out of service two years and the cost, not including contingent loses, was over $200,000. The Big Lick Slope fire in 1894, I think threw that operation idle for two years and cost considerably over a hundred thousand dollars to repair the damages.

And many of these fires have caused loss of life. In almost all of the large fires lives have been lost and many of the small fires that, financially, are unimportant, result in loss of life.

Now, the breakers are generally of frame construction, 6129
and breaker fires have been extremely common in the region. Thinking over the other night, I was able to put the dates to the Avondale Breaker fire in 1869, Kingston in 1894, Starrick Creek in 1910; Cameron in 1887, William A., 1898, Babylon, 1902; Pine Hill, 1903, Mineral Spring, 1906, Number 5 D. & H., 1908, and almost every year there are two or three breaker fires in the region. A breaker five involves the total loss of the breaker, and the idleness of the colliery for usually at least a year, so that the loss from that source is tremendous. Of 6130
course, the breakers themselves are insured, but there is no insurance against the contingent losses which are really the great losses of the fires.

Then, from floods there is——

Q. (Interrupting.) About what length of time, generally speaking, would be necessary—about how long would a mine be idle on account of a breaker fire where the breaker was destroyed? A. Rarely, under a year.

Q. Rarely under that? A. Rarely under that.

Q. Sometimes over that? A. Very frequently 15 to 16 months. 6131

Q. Go ahead. A. Another grave source of danger to anthracite mining operations is from caves, from the caving of the mines. That divides into two general classes, the caving of the mines under heavy water bearing-wash, where flooding results, and the squeezing, where there is merely a loss of coal. Some of the notable floods caves were the Hunt colliery in 1880, near Wyoming, where a tunnel was driven directly into the wash, or so near it, that it caved and the colliery was totally lost, and is still abandoned; the West Nanti- 6132
coke colliery in 1896, where a fall resulted in letting in the water from the Susquehanna River and the colliery was lost. In 1875 part of the Maltby colliery was lost from a similar cave driving into the wash. At the Avondale colliery of the D. L. & W. Railroad, there have been two extensive squeezes letting in the water, one in 1900 and the other in 1910. The resulting loss has been at least a quarter of a million dollars in recovering the collieries and the further continuing cost

6133 of pumping from eight to ten thousand gallons a minute, which is still coming in. The colliery is, however, working. In the Nanticoke colliery of the Susquehanna Coal Company, in December, 1885, a cave occurred in the Ross vein from driving too close to an unknown pothole in the measures. The rock appeared on the surface practically all around the place, and no thought of danger existed.

Q. Was that a case of careless mining or not? A. It was not. There was no indication and no probability
6134 of any such accident, but there was found later to have been glacial whirl-pools at that point which excavated a circular pothole about a hundred feet deep. The bed passed under that, and in mining it this pothole fell in and filled in that section of the mine and overwhelmed 26 men, whose bodies are still in there in spite of nearly two years continuous effort to recover the bodies. It was impossible to get in there and a large section of the mine is abondaned on account of this sand. The sand rushed into the workings, and filled them for three-quarters of a mile from the point of cave.

6135 In 1900, at Nanticoke, a part of the Hillman mine workings which had been standing for 25 years fell in under about 120 feet of wash without warning, and from no known cause. The result was a cave hole covering about 5 acres of surface to a maximum depth of 120 feet, and the sand filled the mine in places for a mile away from the point. The cost of repairs, not including the loss of the coal in working, or the loss of time, was about $200,000. In the Mount Lookout colliery in 1907, a cave occurred, which, apparently, a very small cave,
6136 which about 130 feet of quicksand wash filled a section of the mines. Incidentally, the cave brought in the Post Office at Wyoming, and made a hole on the surface perhaps a hundred feet in diameter.

A very disastrous cave in the Twin shaft in 1896, caused the death of 50 men, and many of the bodies are still in there.

Now, returning to fires in mines, of course the two most notable incidents are the Avondale disaster in 1869, when 126 men were lost by the burning of the

breaker over the top of the mine, there being at that 6137
time only one opening, and the men were all smotherd inside; and the Pancoast fire, April 7, 1911, when 71 men were smothered by the burning of an inside engine house.

Gas explosions in the anthracite mines have, fortunately never been accompanied by very great loss of life. Perhaps the largest was in the South Wilkes-Barre explosion in 1890, when about 26 men were killed.

Q. That is to say, while the occasions of great loss of life by explosions of gas in the mine are fortunately 6138
rather rare, the constant and continuing loss of life by explosions is of almost daily occurrence, isn't it? A. Yes.

Q. And almost hourly? A. Well, weekly occurrence at any rate. The local papers in the anthracite region usually keep a column or part of a column for mine accidents, and it invariably has entries. I don't know that I have, in the 28 years I have lived in the anthracite region, that I have ever seen a paper without some record of mine accidents. But most of them are single 6139
instances, that, while causing loss of life or serious injury—the minor injuries are not reported—are to a single man, and do not get beyond the local papers. The disasters go very much beyond that.

Now, besides the risks of the type I have mentioned, there are the natural risks in the course of mining. The beds of coal are not regular. They are subject to faults, thinning, and displacements, and in very many cases where a bed, or a mine is supposed to have a large body of coal, it is found on exploitation to be very much less than was expected. 6140

I might instance in that connection, the North Dip at the Williams Town and the Lykens collieries of the Susquehanna Coal Company, formerly Lykens Valley Coal Company, in Dauphin County, where for nearly one and one-half miles the Lykens Valley seam is in places 10 feet thick, and absolutely every particle of it fine dirt, crushed by some natural geological twist.

Q. And therefore of no value? A. Absolutely valueless. There have been tens and, I think I would be safe

6141 in saying, hundreds of thousands of dollars spent in exploring that bed, for it seemed incredible that for miles this 10-foot bed, between roof and bottom, should be absolutely worthless.

Another example of irregular measures which would perhaps emphasize the dangers that a mining company may incur, was in the Avondale colliery of the D., L. & W. Railroad. A 35-acre piece, a property leased there, was surrounded with workings in the red ash bed, showing about 18 feet of coal in excellent condition. On
6142 exploitation about 20 acres of these 35, the bed instead of coal had changed entirely to rock. There was absolutely no coal in that 20 acres, although it was surrounded on all four sides by a bed in perfect condition. Just a local change.

Then, the beds further have a tendency to split and change. Take the Baltimore bed, for instance, in the Parrish Coal Company, which is a good example. At the shaft the bed is about 18 feet thick, and a mile to the west, the bed has split into five practically unworkable beds, and occupies nearly 150 feet of strata.

6143 I might say that an anthracite bed is not solid coal, but is composed of layers of coal, slate and bone, and the splitting is occasioned by the slate or bone layers thickening and gradually throwing apart the coal layers. Also, the coal layers in distance frequently change from coal through bone into slate, and back again into coal, so that a bed which may be very profitable where it has been explored, may turn absolutely worthless within a relatively short distance.

Then, overlying the greater part of the Wyoming re-
6144 gion, that is the Luzerne County end of it particularly, and some of it in the Lackawanna field, is a very heavy quicksand wash, the mining under which brings in serious dangers of caves and total loss of collieries, so that a very much less percentage of coal can be won from collieries under the wash, as far as our present methods of mining go, than can be won where the surface is somewhat different.

Another danger that is now a serious one is the surface displacement occasioned by the complete mining.

Perhaps I should explain that. In the course of anthra- 6145
cite mining the beds are mined over—first mining—when from 40 to 60 per cent. of the coal is taken; then second mining, or, as it is known in the papers, "robbing," progresses, and all the coal remaining, or as much of the coal remaining as can be obtained, is taken. This second mining results in the removal of all supports, and the natural settlement of the surface. Where the settlement was in unoccupied territory, it was unimportant, but now the settlement is getting into the cities, and very large costs are involved in attempting 6146
to protect the properties, or to reimburse their owners for damages. While most of the anthracite that is being mined in this way is mined with a full release of surface damages, it has been the policy in the region for the companies damaging properties to make repairs. I know one company that has spent nearly $100,000 in the last eighteen months in repairing properties they have just damaged. Then there is a continual increase in taxation. The assessed valuations of property have been attempted to be increased in the last eight years about 600 per cent. Whether they will be—— 6147

Q. (Interrupting.) I notice, or at least I recall in your testimony in the old Reading case you spoke of valuations for the purposes of taxation being about three thousand per superficial acre. A. About $50.00 per foot acre; the present assessment is attempted to be made upon $250 per foot acre.

Q. In other words, it has risen from the time you testified from whatever it was then to about $9,000 per superficial acre, as the valuation now for the purposes of taxation in Luzerne County? A. Very considerably 6148
over $9,000 per superficial acre. It has attempted to have risen five times. It is only proper to say that the 1907 assessment is still in litigation in the court, and all the later assessments are in litigation.

Q. Nevertheless, the valuation stands up to date latterly at something about or over $9,000 per superficial acre? A. Yes.

Q. For the purposes of local taxation? A. Yes.

Q. In addition to that, they put on a tax—a direct tax of 2½ cents per ton. A. Two and one-half per cent.

6149 Q. Two and a half per cent. of the valuation at the breaker upon merchantable coal? A. Yes, sir.

Q. Which means about how many cents per ton, run of mine—6 or 7 cents? A. (Interrupting.) Two and one-half per cent. on all merchantable coal.

Q. On the value thereof at the breaker? A. Yes. That would mean 7 or 8 cents a ton.

Q. Run of mine? A. Yes, run of mine, all sizes.

Q. Now, Mr. Norris, you have told us in a general way, the length of time necessary to develop a colliery
6150 for the purpose of mining coal, and in a general way the cost of that sort of thing. When that coal is mined, all those developments, openings, airways, shafts, mines, breakers, boiler-houses, what are they worth? A. Nothing.

Q. You cannot get as much out of them—the junk price of them is less than it costs to get them off? It is an expense to get them off the property, isn't it? A. There might be a little junk price to the machinery; all the mine developments are worthless.

Q. Absolutely lost? A. Yes, absolutely lost. In valu-
6151 ing the Temple Company's property I gave—in appraising the Temple Iron Company's property I gave no recovery value for the equipment. I did not consider that it would have any recovery value.

Q. Now, what have you got to say after you get your colliery equipped and start off with the mining operation, what have you got to say about the price it costs, whether it is large or small, of maintaining it, keeping it in working order during the time it is working? A. Well, that is one of the large costs of mining. The
6152 maintenance cost is charged to mining, and it is a very considerable item.

Q. A constant item during the entire life of the property? A. A constant item for the life of the colliery.

Mr. Warren: Increasing each year as the working extends, requiring longer haulage?

The Witness: It increases. The maintenance cost increases each year until very close to the finish of the colliery, and then it is usually decreased by allowing it to run down to its final extinction.

Q. Well, now, as a mining operation is developed by 6153
the driving of gangways, and airways, and so on to get out the coal, what have you got to say about the increase or decrease of the water that comes in? A. The water will increase about as the workings extend, under normal conditions.

Q. And about how many tons of water, normally, has an operator of anthracite mines got to pump out per ton of coal? A. There is no normal quantity. It ranges from one or two tons in the dryest collieries to as high as 40 tons in the Lykens Valley colliery, which 6154
is probably the wettest property in the anthracite region.

Q. That is one or two tons to 40 tons of water for every ton of coal? A. Yes. In the Lykens Valley colliery about 40 per cent. of all coal hoisted from mines goes to making steam principally to pump out the water. The water is pumped out, most of it, 1,800 feet vertically. It amounts to from 6,000 to 12,000 gallons per minute, depending upon the season of the year. The pumping of water in wet collieries is one of the critical points of the operation of a colliery. It is necessary to 6155
maintain an output sufficient to provide the fine coal in the smaller buckwheat sizes to make your steam for pumping, and when your colliery fails to make that production, it has got to close. I might say in valuing the Temple collieries, that that proposition came up with three of them, and it was necessary for me to figure on the closing of the collieries therefor when they would necessarily fall below 100,000 tons, and in one case 150,000 tons yearly production, because they would not be able to produce sufficient coal to handle their 6156
pumping.

Q. Now, you have been, with reference to water conditions, so far speaking of normal conditions, that is so far as there is a normal condition. What have you got to say as to the collieries particularly in the Schuylkill region, that are subjected to additional water burdens every time there is an extraordinary rain, or heavy rainfall? A. That is a condition incident to practically all of the Schuylkill, Shamokin, Lykens and Tamaqua

6157 regions. The coal lies on heavy pitches, and crops down on the mountain-side. The region is a terminal moraine, which means that the surface is covered with heavy boulders, and gravel, so that ditching is only a minor palliative instead of being as in other regions, a means of stopping the inflow. Practically all the water falling on the watersheds above the outcrop has got to go into the mines. It is impossible to conduct the bulk of it past the crop falls, it being understood that in these sub-pitches the coal is mined directly up to
6158 the surface, and the surface in a line along the outcrop allowed to fall. These are open pits connected with the mines, and the water coming down naturally falls into them. Such collieries are subject, besides their regular water to dashes of water, often flooding the lower levels, and it is necessary to provide pumping or hoisting equipment to take care of many times the normal water in such collieries.

Q. Now, in addition to the added expense of handling all that water that comes in in this way to which I understand you say they are frequently subjected, is
6159 that right? A. They are subjected after every important storm.

Q. Yes. Is it not also true that the companies have frequently a practical cessation of work in the colliery, in the mine? A. Certainly.

Q. And what effect does this water standing there during such cessation, and while they are grappling with it, getting it out, what effect does that have on the timbering and interior workings of those mines, and tracks, and all that sort of thing? A. The result of
6160 every flood means a thorough cleaning up of the part of the mine which has been flooded. The roof in places is down, timbering is crushed and the tracks are covered with debris and often there is from a week to three and four weeks time spent in repairs of the particular levels which have been flooded. Further, take through the Lytle colliery or Williamstown colliery, both of which are equipped with hoists instead of pumps, it is necessary after every large storm to put auxiliary tanks on the coal hoists and devote the entire hoisting

plant of the colliery to getting out the water. In pump- 6161
ing collieries, the pumps are occasionally flooded by the heavier inflows, and that means extreme expense in recovering the bottom workings.

Q. What is the character of this water after it gets down in there and stands awhile, and what effect has it on the rails and on the mine? A. Acid water.

Q. And on the machinery? A. It is acid water. It injures, or, in cases, destroys all iron work which it comes in contact with. The water in the anthracite mines is notoriously extremely acid, so much so that 6162
particularly in the Schuylkill region it is necessary to use lined pumps and lined column pipe, lined either with lead or cement or wood, to protect the iron pipes and the pumps from the water. That means a large increase in the expense of installation.

Q. I wish you would tell me if there is an added burden upon a lessee which is not on a fee owner of a coal operation, and if so, just briefly and concisely what you can recall as being considered an added burden on the lessee over and above what would be on him if he owned the fee of the coal? A. There are very decided burdens 6163
on lessees over the burdens on fee owners. In the first place, almost all leases require payment of a minimum royalty; that is payment for a certain tonnage of coal whether mined or not. Ordinarily that minimum is recoverable in future mining, providing that more than the minimum amount is mined. The result has been that in very many properties the minimum has been overpaid by enormous amounts and in many of them there is little or no hope of ever recovering the overpaid minimums, thus actually increasing the royalties. 6164

Q. Well, now take a responsible lessee, we will say the Lehigh Valley Coal Company, why don't they stop when it comes to that point where they are losing money every day? Why don't they quit? A. They would often like to, but under the terms of their leases they are obliged to mine certain quantities of coal, or certain classes of coal, in some leases all the coal in the ground has to be mined, all the merchantable coal.

6165 Q. And if they did not, they would have to pay for it anyhow? A. Yes, would have to pay for it anyhow, and will be sued and the lessor will recover.

Q. In other words, if he was the fee owner and came to that stage he could quit, couldn't he? A. He could, and would, and does.

Q. He would quit? A. He does quit.

Q. But if he is a lessee he is like the fellow who has got hold of the tail of the bear, he can't let go, can he? A. No.

6166 Q. In addition to that the lessee finds himself, doesn't he, in this position, that the demands for sizes of coal have changed in later years, and are different from what they were at the time he made his contract, and he has either got to meet the demands of the market or prepare coal that cannot be sold, and if he meets the demands of the markets as to sizes, an additional burden is put upon him by his lessor, isn't that a fact? A. Yes, there have been very many so-called "breaking down" cases where the trade when I went to the region did not produce anything or any kind smaller than pea coal.

6167 There was a little No. 1 buckwheat, they produced probably fifteen or twenty per cent. of lump, and a considerable percentage of broken coal. Lump and broken coal have entirely disappeared, or practically entirely disappeared from the market. No new breaker that I know of has any provision for shipping them or for preparing them. That means that perhaps twenty per cent. of the output has to be broken down to smaller sizes. Now, the loss in breakage is considerable, and the lessor very naturally claims that he is damaged by

6168 the breaking down of this coal and sues for a payment for the coal as it would have been at the time he leased. That is particularly the case in the leases which were made in the 70's and early 80's, where no price was charged for the smaller sizes, and those law-suits are a continuous performance in the anthracite region, and many large recoveries have been made, and more will be made.

Q. And many adjustments have been made amicably? A. Yes, many adjustments have been made amicably.

Q. But there is a constant friction and difficulty be- 6169
tween lessor and lessee about that and other things connected with the interpretation of the mine leases that entail cost and trouble and annoyance to the lessee, isn't that so? A. That is most emphatically so.

Q. Which, of course, the fee owner does not have at all? A. No. Further, in that connection, the fee owner may make his choice as to whether to take out the coal and damage the built-up surface above it. The miner of leased coal is pressed by his lessor to take out all the coal under his lease, and while he probably has a legal 6170
release of damages, at the same time he incurs the obloquy of the community, and frequently as a matter of policy spends large amounts of money in repairing damages.

Q. You represent a considerable number of lessors, don't you, as consulting engineer? A. Not a considerable number; a few.

Q. But you know that there are engineers there who are employed exclusively as representing lessors to keep after lessees about all these various questions that arise? A. In all the anthracite region there are men who make 6171
a business of looking after leases, leased coal, enforcing the strict performance of the lease contract.

Q. How about this situation, as to the mining of the coal, time of its mining and so on, the fee owner is in a position to do as he pleases about it, isn't he? A. I think I have already touched on that. The fee owner——

Q. (Interrupting.) But the lessee has no choice except to follow the terms of his contract? A. The lessee is forced by his minimum clause to mine with a certain rapidity, and the minimum clauses are fixed to require 6172
active mining.

Q. They are the least measure of diligence, aren't they? A. I should think so, yes.

Q. What have you got to say about the change in the situation? There has been a change both from statutory enactments and from municipal regulations with reference to the deposits of culm, and the pumping out of mine water—that is allowing mine water to flow in certain channels. I refer now especially to the acts

6173 regulating the pollution of streams, and so on. What change has that made under which the operator is required now to incur greater expense, if that is a fact, than before? A. In my early days in the region about thirty years ago it was common practice to dump the culm directly into the streams, and thereby get rid of it. At the present time we are forced by legislature enactment, every effort is made to avoid the pollution of streams with culm, and expensive plants have been put up, the culm banks have been formed into filters to filter
6174 out the culm, settling tanks have been provided at many collieries to settle the dirt in the water that is used in the course of preparation, and which carries a large amount of fine dirt; and further, at many if not most modern collieries the practice has been adopted of putting the culm into the mines, which involves not merely the culm, but in many collieries the rock, the breaker refuse rock is crushed fine and put into the mines.

Q. With large quantities of water? A. This requires from five to ten times the amount of water that there is of refuse, all of which water has to be pumped out of
6175 the colliery. The practice is used both to dispose of the refuse and as an extra support for the mines to avoid surface subsidence, and efforts are made to thus protect the surface, of course, at a very material cost to the operator.

Q. Well now, the breaker preparation of anthracite coal is necessarily a dirty business, isn't it? A. Yes.

Q. You cannot break up coal, particularly up in our region, in a breaker without creating dust, can you? A. In a dry breaker there is a great deal of dust; in a wet
6176 breaker there is a great deal of dirty water to dispose of. Many of the modern dry breakers are equipped with ventilating apparatus and settling building, both to clear the breaker for the sake of the health of the employes, and to avoid the dust nuisance on surrounding buildings and land.

Q. Well, in your experience and within your knowledge has it occurred where, for example, a breaker, when you first went into the region was away off by itself and communities have grown up to it? A. Oh, yes.

Q. Building lots have been sold and a town or village has grown up to it? A. Yes, in almost every case. 6177

Q. This causes trouble right away, doesn't it, and then that operator has got to equip the breaker with all modern appliances for taking care of the dust and preventing it getting on the people who came there and bought their land a great deal cheaper because it was near a breaker? A. That is the case. I personally equipped all the Susquehanna dry breakers with this apparatus, which cost from $10,000 to $25,000 a breaker, and then got suits for dust damages and lost them. 6178

Q. Well now, I might ask you in connection with this pollution of streams matter to which you have referred, you cannot drive a drainage tunnel from one water shed to another water shed? A. Not without paying damages. The Jeddo tunnel, for instance, driven by the Markles, they had to buy water rights all the way down the creek, or pay damages. As a matter of fact, instead of paying damages I think they bought up the water rights.

Q. Well, you are not a lawyer, so I won't ask you whether they could not have stopped them altogether, if they had not done that? A. I don't know. I do 6179 know, though, that it has been necessary to buy up or pay damages for all those cases, and I presume there was some good reason for doing it.

Q. That water you are now referring to was clean water except it had sulphuric acid in it, it carried no culm? A. It carried no culm. It was extremely acid water, however, that not only destroyed the water as a potable water and for watering stock, etc., but destroyed all the fish in it, and destroyed it largely for manufacturing purposes. That is the real damage. 6180

Examination by Mr. Warren:

Q. You don't happen to recall the Hallstead colliery flooding out about the time of the great strike in 1902, when it took them about four years to get that out? A. I do indeed recall it. I made an examination of it afterwards.

Q. I did not hear you give it? A. I did not mention a great many that I know. The Hallstead colliery was

6181 practically destroyed by the flooding, and the entire bottom Dunmore caved as a result of that. I think there were three lives lost in there, and an enormous expense has been incurred in reopening, and a great part of it has not been reopened up to this time.

Q. That colliery is situated where? A. That colliery is situated up above Pittston, about two miles above Pittston.

Q. How far away would you say it was from the William A. colliery of the Lehigh Valley Coal Company? A.

6182 Across the river.

Q. About how far away? A. Oh, half a mile perhaps. The workings adjoin. The workings are merely separated by a barrier pillar.

Q. And the general character of the strata and the beds of coal is the same in both operations, is it not? A. Yes, generally. I might further state there is quite a heavy quicksand over part of the Hallstead colliery, and part of William A., which makes mining very expensive and dangerous there.

6183 Q. You happen to recall, don't you, a raise in the wages of miners in 1912, ten per cent.? A. Yes.

Q. There was a cessation of mining, or a suspension for about six weeks, wasn't there? A. Yes.

Q. And there have been several raises in the wages of miners since 1899, the period to which you have referred, and you spoke of some of them when you were a witness in the former Reading case, did you not? A. All the raises, I think, were in my former testimony except the one in 1912.

Q. Every year a man is mining out coal at a colliery,

6184 he is exhausting his capital, isn't he? A. Yes.

Q. There is no way of replacing that? A. No.

Q. Could it not be illustrated by a man having a ten-story building renting it, and every year a story coming off? A. Yes.

Q. And therefore, what would you say as to the fairness of a return in such a case being larger as compared with that of the owner of a ten-story building which had its ordinary life to live, we will say fifty or one hundred years with ordinary repairs? I mean, wouldn't

he be entitled to a larger return? A. He is certainly entitled to a return that will amortize his capital investment. 6185

Q. He will have to get a larger return if he wants to come out even? A. If he is going to go into the matter as a business proposition he has got to have a return to yield interest and amortization expense, amortizing not only his investment in land, but his investment in development. That is one of the necessary charges of mining cost, and one in many instances which is not properly taken care of.

Q. You spoke of the surface conditions and withdrawal of coal by what you spoke of as second mining, and the consequent subsidence of surface, and said, as I understood you, that while it was true as to many of the surface acreages there were release clauses so that the owners could not recover damages as against the mine owners; yet, if you take any considerable acreages in these years that a mine owner is in control of, they become crossed and gridironed with streets and courts and alleys and highways, if it be in townships or boroughs? A. Yes. 6186 6187

Q. And does that not amount to a very considerable proportion of the total surface acreages? A. Yes.

Q. And you don't mean to say that the mine owner can secure releases from damages as against subsidence or injuries to such portions of surface acreages as are utilized by the public as thoroughfares in one form or another? A. That is a legal question that I would be unwilling to attempt to answer.

Q. But you don't infer that, I mean, by the suggestion as to surface acreage? A. No. 6188

Cross-Examination by Mr. Gordon:

Q. As an expert mining engineer thoroughly cognizant with the subject, will you tell us whether in the last twenty years through the efforts of mining engineers like yourself, there have not been considerable advances in the art of mining? A. Yes.

6189 Q. And those advances have been going on continuously, and are going on to-day? A. Yes, there have been very decided advances in the art of mining.

Q. And will you not tell us also whether through improvements in the methods of burning and otherwise using coal, coal of a nature which in former times would not have been salable is to-day marketed? A. Coal of sizes which in former times would not be marketable is marketable. The preparation, so far as impurities, is better than it was thirty years ago.

6190 Mr. Warren: You mean more strict?

The Witness: More strict. Well, there is better preparation, less impurities in the coal to-day than thirty years ago.

Q. Due to better preparation? A. Due to better preparation; but it is a fact there are very much smaller sizes now burned.

Q. And those smaller sizes are a necessary incident to the preparation of coal in the prepared sizes? A. Yes.

6191 Q. And constitute a considerable proportion, I believe you testified, of the whole? A. Yes.

Q. And those various small sizes, pea and buckwheat, perhaps buckwheat Nos. 1, 2 and 3, which were formerly unsaleable, are to-day saleable? A. Yes. The pea was saleable and has been saleable for very many years. Buckwheat No. 1 came on about 1884, 1883 or 1884; buckwheat No. 2 and 3 in the early 90's were beginning to be used.

Q. But their general use is a matter of more recent date, use in large quantities? A. Yes, and further the

6192 change in the market now requiring the breaking down of the larger sizes has greatly increased the quantity of that coal to be disposed of. The actual total quantity per ton mined is very much greater now than it was thirty years ago on account of the breaking down of the larger sizes, the necessary breaking down of the larger sizes.

Q. Do you know whether the very small sizes of coal are not mixed with bituminous coal in order to comply

with the smoke ordinances, for instance, of some cities? 6193
A. Yes, they are used for that and also used in locomotive boilers in that way.

Q. And by means of forced draft pipes, are used for steam purposes? A. We have developed that business very largely within the last thirty years.

Q. Hasn't its general use been more recent than the last thirty years? A. Yes, the last twenty years, the general use of it.

Q. And perhaps increasingly, the use has been increasing during the last twenty years? A. No, sir, I 6194
don't think so, in proportion. The gross has increased very much because the total anthracite output has increased very much, but I don't think in percentage the output itself has increased appreciably in the last twenty years.

Q. You would testify then that in 1894 the use of the very small sizes of anthracite coal was as general as it is to-day? A. Well, I don't think it was. I think it was not, but I think that the percentage of small sizes produced was about the same, produced and necessarily marketed, was about the same as to-day. 6195

Q. But the market was not the same in 1894 as to-day? A. The market was not as good for it. Much lower prices.

Q. Lower prices demanded for it? A. Yes.

Q. To-day the old culm piles formerly considered waste, are being reworked? A. They have been reworked for many years.

Q. They are being reworked to furnish this very small coal to supply the market demand? A. Yes.

Q. Would you say this statement which I will read 6196
from the Lehigh Valley Railroad Exhibit No. 86, the production of coal in 1912, is true: "In the earlier days of anthracite mining, the colliery consumption consisted of portions of the product which otherwise would have gone to the culm dump. Nowadays there is a market for almost every grade of anthracite that will burn. No more coal goes to the culm banks except for temporary storage and subsequent recovery by washeries. The old culm dumps themselves are contributing their share

6197 to the total production and these unsightly monuments to former waste are rapidly disappearing"? A. That is to a certain extent correct. It should be corrected to the extent that the coal passing through the finest meshes to-day, namely, 3/32 to 1/16, is still wasted.

Q. That would be practically dust? A. Yes, sir, below the buckwheat sizes, that is below No. 3 buckwheat size, smaller than No. 3 buckwheat size.

Q. During the last twenty years have there not been marked changes in the method of organization of the
6198 work in a mine, in the sinking of shafts and the slopes? A. No.

Q. Haven't vertical shafts been substituted for inclined slopes? A. No. That is not the case. Inclined slopes are still used where the coal is approachable in that way. They are much cheaper to sink and develop the coal much more readily. Vertical shafts have been in use in the regions from the earliest times, and, of course, the deeper deposits, particularly where the outcrop is not known, are necessarily approached by vertical shafts. The vertical shaft is very much more expen-
6199 sive to sink than a slope.

Q. And permits the working of beds which would not be accessible by ordinary slopes? A. Yes, permits the working of operations or beds which are not accessible by slopes. But anyone who can sink a slope on the outcrop of the coal, would naturally prefer a slope, and very many of the latest operations are operated by slopes rather than by shafts. A shaft is generally a forced put rather than a desirable acquisition.

Q. Haven't mechanical methods of haulage been sub-
6200 stituted to a considerable degree for the old fashioned mule? A. Yes.

Q. Wouldn't that have a cheapening effect upon the transportation of the coal from the outlying districts of the mine to the central shaft? A. Oh yes, it is true without the present methods of mechanical haulage it would be impossible to operate some of the long distances that are now operated successfully.

Q. In other words, they increase the workable area from a single shaft? A. They increase the workable area from a single shaft, yes.

Q. And, therefore, decrease the cost of operation of 6201
it? In other words, where you formerly needed perhaps two shafts, you can now work from one shaft with mechanical haulage. A. On the other hand, the haulage is probably as costly as with mules.

Q. The haulage over the longer distances? A. Yes.

Q. But it would be necessary to sink only one shaft instead of two? A. Yes.

Q. And the sinking of a shaft was a very costly proposition you said? A. Yes.

Q. Isn't it true also that by reason of the improved 6202
methods of mining, including among others the improved methods of robbing the pillars, and of filling-in old unused chambers by hydraulic processes, it is possible to get a much larger percentage of the total coal in the ground than was formerly the case? A. Yes, as applied to virgin coal. In old mining, it is very questionable how much will be recovered. In old mining, the pillars are too weak in many cases to permit successful robbing.

Q. You mean mining under the wasteful methods 6203
which were in vogue before the modern methods were studied out by engineers? A. Yes. I think that we will get a very decided increase in production with modern methods.

Q. I will read you another section from the Lehigh Valley Railroad Exhibit No. 88, being the pamphlet entitled, "Production of Coal in 1912," page 24: "It is usual to consider that for every ton of coal that has been mined and marketed, half a ton has been lost through necessary waste in mining. In the earlier history of mining, both the anthracite and bituminous 6204
regions, the percentage of loss was considerably more than half a ton for every ton mined. In the anthracite region it was estimated by the Anthracite Waste Commission, which made its report in 1893, that the recovery was only 30 per cent.; in other words, a ton and a half was lost for every ton sold. At the present time the recovery in the anthracite region is from 60 to 65 per cent. so that conditions are reversed and for every ton of coal lost a ton and a half is sold or used." A. I think

6205 that is a very fair statement. It would vary under different conditions. In cases it would be as high as 85 per cent. recovery, and other cases less than 50% recovery.

Q. That is a general statement? A. Yes. There is one point I have considered in connection with that that at the present time there is no knowledge as to what will happen in the very deep workings that are going to be necessary in the future, as to whether it is going to be possible to do second mining. We know with the
6206 first mining we have to come down to a very small percentage to hold the mines safe. In the very deep beds, in places, I know of instances where only 35 per cent. is taken in first mining.

Q. Your experience has been in the Schuylkill region principally? A. No, my experience is principally in the Wyoming region, and I have been chief engineer for the Susquehanna; we had collieries in all regions except the Hazleton. And after leaving the Susquehanna I was consulting engineer for Coxe Brothers & Company for several years, and obtained a consider-
6207 able familiarity with the Hazleton region.

Q. It is true, is it not, that through erosion or the upheavals of the earth's surface, these very deep beds, or the deepest beds are in the Schuylkill region? A. Yes.

Q. And also, all the Schuylkill region is much more tilted than the Wyoming region? A. Very much more.

Q. The tilting of the coal, as I understand it, sometimes folds one bed over another and crushes it, but in the Wyoming region the coal beds lie flat or at least
6208 flatter than in the other two regions? A. Yes, the beds are generally flatter in the Wyoming region, although there are a great many faults and folds in the Wyoming region.

Q. But speaking comparatively? A. The Wyoming region has more favorable conditions for mining, generally, except as to one point along a good part of the Wyoming region the pitch is unfortunate.

Q. Why? A. The pitch is unfortunate. It is too steep to take a mine car out and not steep enough to run the coal out.

Q. But you said in your former statement the conditions are favorable? A. Yes. 6209

Q. The Lehigh region also would be more favorable to mining than the Schuylkill, would it not? A. Yes, the Lehigh region has practically the same pitch as the Schuylkill, but not the extreme depth.

Q. It is possible to mine coal more easily there? A. Yes, and there is a considerable amount of stripping there.

Q. There isn't the depth to pump the water from, did you state? A. No. 6210

Q. There is a good deal of stripping, by which they strip off the earth's surface and take the entire bed of the coal? A. Yes.

Q. And where those are very thick veins, as in the Mammoth vein, that results in a very large recovery? A. Results in a very large recovery. Not necessarily from top mining. That depends on the amount of stripping.

Q. Yes. A. Of course, the stripping will be carried to a depth that financial considerations indicate.

Q. It is true, is it not, that as a result of the improvement in the methods of mining, and other causes of which we have spoken, very much thinner veins are capable of being commercially worked to-day than could be in 1895, perhaps? A. Yes. 6211

Q. Are you familiar, or perhaps I should assume that you are familiar, as an expert mining engineer, with the articles which were published by Mr. Griffith in the Bond Record in 1896? A. Yes, I have read that.

Q. You knew Mr. Griffith as a figure in mining engineering? A. As a geologist, hardly as a mining engineer. 6212

Q. You knew that at the time the calculations as to the recovery per foot acre which he adopted from the experience of the past for the Wyoming region for himself were 650 tons to the foot acre? A. I don't remember his article in that detail. I have not read it for a number of years. I know that he did use some figure, but what the figure was I don't remember.

Q. Don't you know as a fact that at the present day the tax assessors in the Wyoming region in estimating

6213 the recovery content of coal as a basis of taxation estimate a much larger recovery per foot acre than that? A. Yes, they estimate a recovery over 1,000 tons.

Q. Over 1,000 tons? A. In my personal opinion I think they have estimated rather more than they are justified in estimating.

Q. Some places they estimate as high as 1,200 tons? A. Yes, there are some places 1,200 tons can be recovered, but I think the tax assessors have estimated more than was justifiable.

6214 Q. Is it not true also that much thinner veins are being mined to-day in the Wyoming region, with commercial practically, than were being mined ten or more years ago? A. Yes; not so much in the last ten, but in the last thirty years there has been a very marked decrease in the thickness of vein which was considered minable.

Q. Do you happen to recall that Mr. Griffith in his articles of which I spoke estimated that a four foot bed was the working basis in the mining region of the Wyoming region at that time? A. I don't recall his

6215 using it. It is the fact that that was considered—I don't recall how he estimated, but it is a fact that at that time a four foot bed was considered about the minimum.

Q. You understood what I was referring to when I said that a four foot bed was the minimum? A. No, I do not remember Mr. Griffith's figures.

Q. You did state, however, that a four foot bed—— A. In the 80's four feet of coal was considered about the minimum.

Q. What do you mean by four feet of coal? A. A bed

6216 containing four feet of coal, which would mean five or six feet of strata, being a bed with four feet of coal in it.

Q. Yes. A. Understand that a coal bed is not all coal. There will be perhaps six inches of coal and an inch or two of slate and an inch or two of bone, and another inch or two of coal, then perhaps a couple of inches of slate, and maybe two feet of coal in a body, and then some more slate and some more bone and some pyrites, and the total coal in a bed is rarely over sixty or seventy per cent. of the entire bed.

Q. But when mining engineers speak of a four foot vein 6217
do they mean a four foot vein of clear coal? A. They mean a bed containing four feet of coal. They don't mean a bed that is four feet thick. They mean a vein containing four feet of coal. The vein may be six or seven feet thick.

Q. A four foot vein was regarded as the minimum vein in the Wyoming region in 1895? A. No, I would not say a four foot vein in 1895. I would say three feet or three and a quarter feet in 1895. In 1885 a four foot vein was considered the minimum. In 1895 it would be nearly 6218
three feet or three and a half feet. At the present time it is two feet eight, is about the limit of coal that is economically workable.

Q. Isn't it a fact that the tax assessors for the Wyoming region treat as workable coal veins from two to two and a half feet thick? A. I believe they do, but I don't think they are justified.

Q. Isn't it true that veins as low as two feet thick are actually being worked? A. They are, but not with a profit; as a matter of fact, with considerable loss.

Q. All of them? A. I know of only one case where a 6219
vein as thin as two feet is worked with actual profit.

Q. But you do know of one case? A. Yes. At least it is alleged to be worked at a profit. I have never had an opportunity of seeing the books.

Q. You do know that in connection with other veins, perhaps, two foot veins are being actually worked in the Wyoming region? A. Yes, in rare cases.

Q. Isn't it true also that the increase in prices of anthracite coal has enabled the working of veins which in former times would have been unworkable? A. Yes. 6220

Q. And that is likely to continue in the future so that if the price of coal goes up, the beds of coal which today would be regarded as impracticable from a commercial standpoint, will become workable? A. If the price at the colliery should increase, they would undoubtedly.

Q. If the price received by the operator. A. If the price received by the operator increased, it would put available thinner beds. The increased cost, however, goes very rapidly as the beds thin.

6221 Q. You spoke of the Lykens Valley, the crushed condition of the Lykens Valley vein.

Mr. Wheaton: That is in the Schuylkill region.

The Witness: It is in part of the Schuylkill region, what is known as the Lykens Valley region.

Q. The Lykens Valley coal is a premium coal, is it not? A. The Lykens Valley coal sells for a higher price.

Q. It has peculiar characteristics which make it more valuable on the market than other coal? A. Lykens
6222 Valley coal has become, probably, the star anthracite. It is a coal with a very high volatile as compared with the normal anthracite coal.

Mr. Wheaton: Like Bernice coal, isn't it?

The Witness: Almost identical with Bernice coal.

Q. Bernice coal commands a premium on the market? A. Not to my knowledge.

Q. You know that Lykens Valley Coal does? A. Yes.

6223 Q. And you know Lykens Valley coal has, because of its—the characteristic of Lykens Valley coal is its quick burning characteristic, which makes it desirable coal for certain purposes, and makes it command a premium on the market? A. Yes.

Q. This crushed coal of which you spoke was in the Schuylkill region? A. In the Lykens Valley region.

Q. Part of the Schuylkill region? A. Yes.

Q. Were you referring only to the Lykens Valley portion of the Schuylkill region when you spoke of crushed
6224 coal? A. I was referring to a particular colliery as an example of the dangers in mining which could not be discounted in advance.

Q. Yes. A. I was referring solely to the Williamstown colliery of the New York and Susquehanna Coal Company, formerly the Summit Branch Mining Company. That was a particular case used as an example of possible conditions in mines.

Q. This crushing of coal you testified occurred at principally where the beds were tilted? A. The bed was on about a seventy degree dip, very heavily tilted.

Q. The reason this crushed coal is not commercially 6225
minable is because of the small percentage in prepared sizes, is it not? A. No percentage of any size in it, absolutely dust.

Q. There are degrees? A. Not in this particular case; it is all absolutely dust.

Q. But you are using that particular case as an example of what might happen in coal mining? A. Yes.

Q. Speaking of the crushed condition of coal in general it is not ordinarily reduced to dust? A. Oh, no. In the crushed coal it varies from coal that is tender 6226
and may produce a small percentage of prepared, down to the extreme case which I gave, where it is absolutely crushed to dust and is valueless.

Q. Isn't it a fact that processes of briquetting very fine coal are now used in Europe? A. Yes.

Q. Isn't it a fact that such processes are being used in this country to-day? A. There have been many attempts to produce them. I don't know of any successful ones to any extent. There is a little fine coal briquetted in Scranton, which is used largely by the Lackawanna Coal Company and the Lehigh Coal & Navigation Com- 6227
pany for general steam work. In briquetting the general experience has been a failure in attempting to briquette anthracite.

Q. Not because anthracite doesn't form in briquettes, however? A. Anthracite will not form in briquettes except with a very large amount of binder, and the binder has been the stumbling-block in a successful briquetting business in anthracite. Bituminous coal will briquette with a very small percentage of binder, and several bituminous coals can be pressed into 6228
briquettes with two or three per cent. of binder, but anthracite coal requires seven or eight per cent., and the binder is expensive.

Q. Then it is merely on account of the expense of the binder and not because of the non-binding quality? A. Yes, and because a large amount of binder makes a smoky briquette. The only binder that has been satisfactory are the tar products, and the large amount necessary to briquette anthracite coal makes a very

6229 smoky briquette, and that has been one objection. And the further fact, the cost of providing the binder and briquetting and cleaning the fine coal to a briquetting possibility, has made it cost too much to be an attractive commercial proposition up to the present time.

Q. If, however, the supply of anthracite should be reduced sufficiently, or if the demand were to grow enough to warrant an increase in price, the use of briquettes might conceivably or very possibly become commercially general? A. With a sufficient rise in price, un-
6230 doubtedly.

Q. Which would result in the utilization of all this crushed, or a very large part of this crushed coal?

Mr. Wheaton: This Lykens Valley crushed coal?

Mr. Machen: Speaking of crushed coal generally.

The Witness: If such crushed coal is available for mining, yes. The crushed coal is generally, not in this Lykens Valley case, but in general
6231 cases, crushed coal is in connection with crushed measures that makes it dangerous to mine. The usual crushed pockets and large faults throughout the Wyoming, Schuylkill and Shamokin regions are generally associated with such disruption of the rock as makes mining extremely dangerous and often impracticable.

Q. But nevertheless, there would be considerable areas of crushed coal, or of coal which by reason of the tilting would not furnish a sufficient amount of prepared
6232 sizes to be commercially minable to-day, which would be recoverable in case briquetting became a common practice. A. That is a question difficult to answer at this time. The probabilities are that if briquetting becomes a common practice the so-called slush or culm, the fine coal that is now wasted, would be briquetted before attempt would be made to mine the actual crushed coal in the mines.

Q. Speaking of that fine coal, is it not a fact that a great deal of that fine coal, really dust, as I understand

it, is actually used for the support of mined-out chambers—washed into the mines? A. A considerable amount of it is washed into the mines. 6233

Q. And really is utilized in that manner in the place of other perhaps more expensive substitutes? A. Yes. The fine dust produced by the collieries, has proved to contain a very large amount of ash, the average probably being 40 per cent., and it requires a costly preparation of cleaning to put it sufficiently low in ash to make it available for briquetting.

Q. You are speaking of the Lykens Valley crushed coal? A. No, I am speaking of the general dust throughout the region, and general fine coal throughout the region. 6234

Q. That is the dust after the washing out of the small sizes? A. After the washing out of the small sizes, yes. The Lykens Valley dusts are relatively poor, and attempts have been made to briquette it, but not with success.

Q. You spoke of the decrease in the percentage of prepared sizes due to the breaking down of the lump coal. Let me read to you a paragraph from the report of the Lehigh Valley Railroad Company to its stockholders for the year 1908, signed by E. B. Thomas, President. (Reading.) "Improvements already made together with those now in progress tend not only to offset the increased expense of mining incident to the greater depth of the workings and the long underground haul, but also result in a greater percentage of prepared sizes of coal, the same having increased 9.38 per cent. in the last five years." Would you not say that to be a correct statement of the actual condition in the Lehigh Valley Coal Company as a result of improved methods of mining in recent years? A. That is partly due to the improved methods of mining, and, while I don't want to attack Mr. Thomas' accuracy, it is partly due to the increased amount of fuel that is used. The fuel consumption has increased very greatly in the last 5 or 10 years, and particularly in the Wyoming Valley, and a portion at least of the increased percentage of the prepared sizes is due to a larger use of the fine material as fuel. 6235 6236

6237 Q. How large a proportion of the entire output is used as fuel? A. The average throughout the Wyoming Valley is about 10 per cent.; in some collieries it runs to 15 and 20, and in one colliery to 40. That is the Lykens Valley colliery of the Susquehanna.

Q. But those are in the southern region? A. No, the heavy fuel is in the northern region, in certain parts of the northern region except one or two collieries.

Q. Weren't you testifying to the great amount of steam required to raise the water in those deep work-
6238 ings? A. Yes.

Q. Isn't that one of the principal causes for the expenditure of coal for fuel? A. Yes, but there are certain collieries in which I also testified, in the anthracite region, under the wash, that are not subject to the constant floods we were speaking of, that are subject to very heavy water.

Q. Can you name some of them? A. Yes, the Seneca of the Lehigh Valley.

Mr. Wheaton: About how many tons of water,
6239 do you raise in the Seneca for a ton of coal, do you know?

The Witness: That would be—I am not certain in my recollection. I would rather somebody who knows testify to that. My recollection is about 20; I am not certain.

Q. You haven't any really definite knowledge on the subject. A. I had it, but I haven't it in my mind at the moment. I know it was very heavy. At the Mt. Lookout Colliery, The William A, The Harry E., the water
6240 is heavy. The fuel consumption amounts to about 40,000 tons per year in each one of those three collieries. At the Avondale colliery of the D. L. & W., the fuel consumption is very heavy, and the Susquehanna, Glen Lion colliery, has very heavy water.

Q. What other collieries do you recall in this heavy water region? A. I was just recalling them as I went along. Both of Haddocks' collieries, the Black Diamond and the Plymouth collieries, are both—I don't know the amount of water, but they are both very heavy pumping

collieries. I am taking all in the pumping region now. 6241
The Hampton of the D. L. & W., near Scranton, have heavy pumpings. They pump about five thousand gallons a minute over there. The Lackawanna colliery of the Temple is a wet colliery, although the pumping is probably not as heavy as in the others I have mentioned. The Kingston Coal Company is a heavy pumping colliery. The Clear Spring colliery of Lake & Company, an individual operation at Pittston, was abandoned on account of the amount of water.

Q. Do you remember any others? 6242

Mr. Wheaton: How about the Schooley, in that same neighborhood?

The Witness: That is a heavy pumping colliery. I don't know very much about that particular colliery. I don't remember it.

Q. Who is that owned by? A. The Schooley colliery.

Q. Yes. A. I don't know positively. I know a number of the Pennsylvania Coal Company's collieries along the Susquehanna are heavy pumping collieries, but have not 6243
been in them, and my knowledge is from information given by other engineers, and not from personal knowledge. All I have spoken of was upon my personal knowledge. The Sugar Notch is also a heavy one. They just had a wash of quicksand that shut them up for 6 weeks. They drove into a buried valley in the rock and filled with heavy quicksand.

Q. This heavy pumping territory in the southern region is caused, is it not, by the fact the coal seams outcrop on the surface and are porous, and the surface water runs in? A. Yes, largely. 6244

Q. And that difficulty would be much less where the coal veins were comparatively flat, wouldn't it? A. Not if they are worked to the crop. In the flat veins in the Wyoming region particularly, they are so largely covered with wash that we don't work them to the crop and don't give an opportunity for the entrance of water, and it is impracticable to work them too close to the wash, because you bring the wash in and bring quicksand and gravel into the mines, so that there is less per-

6245 colation, less flood water gets into the Wyoming region, as a rule, than in the Southern region.

Q. You spoke of the State of Pennsylvania taxing 2½ per cent. Is it not true that practically coincident with the application of that tax the large mining companies advanced the price of coal to an amount equal to the amount of the tax at the mine?

Mr. Wheaton: I object to that, what other mining companies may have done I don't know and I don't care, but I do know that this particu-
6246 lar defendant did not do that.

Mr. Machen: Hasn't it advanced the price yet?

Mr. Wheaton: No, they cannot. It is under contract and has sold its coal and cannot advance it.

Mr. Warren: I would like to add the objection that it is not true of several other companies.

The Witness: Some did and some did not.

Q. You have testified to the increase in miners' wages
6247 in connection with the coal strike in 1902? A. Yes, sir.

Q. Do you not also know as a man particularly familiar with the mining business that there was following upon that increase in miners' wages, a very considerable increase in the market price of coal? A. I believe there was an increase. The amount I don't know.

Q. And how much was the increase in the miners' wages given under the award of May, 1912, and 1902? A. In 1902 there was an increase of 10 per cent., and a powder adjustment which varied at different collieries, but it amounted on the average to three or four or five
6248 per cent., and a sliding scale was adopted, and in 1912 there was an increase——

Q. (Interrupting.) Explain that sliding scale. A. Why, the base wages were on a certain price of coal f. o. b. New York, and they varied a certain percentage with the increased price of coal, so that the increase of wages amounted to an average of probably four or five per cent. on the sliding scale.

Mr. Warren: That was the award of the anthracite strike commission, was it not?

The Witness: Yes. The 1912 Commission abolished the sliding scale, and gave a flat increase of 10 per cent., as I understand it. 6249

By Mr. Gordon:

Q. Do you know how much per ton that 10 per cent. increase would affect the price of coal? A. It would vary with every colliery, and it would be impossible to give any general approximation. The cost varies in different collieries, and in every colliery, so that it would be impossible for me to answer any definite amount.

Q. The Blackwood colliery of the Lehigh Valley Coal Company is in the Schuylkill region, is it not? A. I think so. 6250

Q. Do you know of any other colliery of the Lehigh Valley Colliery in the Schuylkill region? A. They had the York Farm at one time; I think that is abandoned.

Q. The Blackwood is the only one you can think of? A. No, the Sioux is in the Schuylkill region.

Q. The what? A. The Sioux.

Q. Is that operating to-day? A. Yes, that is in Mt. Carmel. That is perhaps considered in the Western Field, really a branch of the Schuylkill field, however. The Sioux is in the Western Middle Field, so-called. 6251

Q. Will you tell me whether the Lykens Valley colliery, so-called, is not in what might be called the Southern Field, as distinguished from the Northern and Eastern Middle and Western Middle and Southern Fields? A. Yes, it is.

Q. And speaking of the Southern Field, so defined, has the Lehigh Valley Coal Company any other colliery there except the Blackwood? A. They own the York Farm colliery, which is not at present operated, near Pottsville. 6252

Q. The Blackwood and the abandoned York Form—— A. (Interrupting.) Are the only ones in the extreme Southern Field. There is a number of collieries in the Northern half, or Schuylkill field, which is frequently known as the Western Middle field.

Q. But in the Western Field properly so-called, only the Blackwood and the abandoned York Farm? A. That is all I know of.

6253 Q. And is the Blackwood a large or small colliery? A. I don't know; I have never seen it.

By Mr. Machen:

Q. In what part of the anthracite coal fields is the hard white ash coal produced? A. Generally in the Northern Field, although some very hard white ash is produced in the Western Middle.

Q. Well, isn't there a hard white ash production in the Lehigh Region? A. They also produce some hard
6254 white ash, and also produce red ash.

Q. The Markle coal is hard white ash? A. That is in the Lehigh Region.

Q. That is a hard white ash? A. Yes, so known in the trade.

Q. The hard white ash brings a premium, doesn't it? A. I don't know.

Q. Do you know from which collieries the hard white ash is produced? A. Markles produce it from their Ebervale, Jeddo and No. 2 Highland, I think, are the Markle collieries. The Coxe's produce it from theirs,
6255 and Upper Lehigh produces some from theirs.

Q. The Upper Lehigh is the Lehigh and Wilkes-Barre? A. No, they are individual operators.

Q. What operators, do you remember? A. The Upper Lehigh Coal Company. Leisenrings, I know, but I did not know their trade name.

Q. You have described the deleterious effect of water in anthracite coal mines. Won't you explain what use is made of water in connection with the mining of anthracite coal? A. Why, none in connection with the
6256 mining. In connection with the preparation, very largely used in washing the coal.

Q. In washing the coal, and it is also necessary to run the plant, isn't it, the steam plant? A. Oh, a certain amount of water is necessary, but mine water is not used for that if they can help it.

Q. Well, where does the water for this latter purpose, that is, for the conversion into steam, come from? A. Outside the coal measures almost entirely.

Q. Is it supplied by water companies? A. It is supplied by water companies, and in some cases by deep borings, below the measures, and in many cases the colliery has its own water supply on some small stream outside of the measures. The actual use of water for steam, you know, is a very minor matter; while it is very necessary, the actual quantity is relatively very small. 6257

Q. Is it furnished by comparatively large companies, that is, do companies supply more than one colliery, or does each colliery have its own water company or supply? A. That varies all through the region. In some instances it is supplied by the large city water companies, as in Scranton and Wilkes-Barre, and in other cases the collieries have, each colliery has its own water supply, for instance, the Alden collieries have a couple of driven wells and get all the water from a couple of artesian wells, and the Warrior Run colliery has a little reservoir up in the mountains, and gets water from that, and you can go on almost indefinitely for it varies in each case. In many instances small water companies have been formed for supplying the water to the little mining towns and to the operations connected with them. 6258 6259

Thereupon recess was taken until 2 P. M.

After Recess.

R. Van Arsdale Norris, recalled.

Re-Direct Examination by Mr. Wheaton: 6260

Q. Mr. Norris, as the record now stands it indicates that the Blackwood colliery is the only colliery operated by the Lehigh Valley Coal Company in the Schuylkill region. Where is the Sayre colliery located? A. That is in Schuylkill County.

Q. Operated by whom? A. By the Lehigh Valley.

Q. Where is the Centralia mine—where is it located? A. Schuylkill County and Northumberland.

Q. That is operated, however, by the Lehigh Valley? A. Yes.

6261 Q. Packer collieries No. 2, 3, 4, and 5? A. They are all in Schuylkill County.

Q. And operated by the Lehigh Valley Coal Company? A. Yes.

Q. Park colliery? A. Schuylkill County.

Q. And operated by the Lehigh Valley? A. Yes.

Q. Buck Mountain colliery? A. Schuylkill County; operated by the Lehigh Valley.

Q. That is also operated by the Lehigh Valley Coal Company? A. Yes.

6262 Q. Now, Mr. Norris, you testified in your cross-examination that the art of mining in these later years has increased; has the Lehigh Valley Coal Company to your personal knowledge taken advantage of all the modern improvements in mining? A. I think they are among the leaders in mining methods and in preparation matters.

Q. Has the cost of mining kept pace with the increase in the art of mining? A. The cost of mining has increased rapidly.

6263 Q. In other words, notwithstanding this increase in the art of mining, there has been a still more rapid increase overcoming that in the cost of mining, has there not? A. Yes, a very great increase.

Q. The increase in the cost of mining being greater than any saving developed by the art of mining? A. In anthracite production the cost has increased very materially. The preparation, any improvement in the art, has about balanced the increase in the cost, so that the cost of preparation has not increased very materially in the past few years.

6264 Q. But the total cost? A. The total cost has increased very materially.

Q. Over and above anything gained by the modern methods? A. Yes; the total cost of producing coal is much greater than it has been and is increasing all the time.

Q. You know Mr. Griffith personally? A. Yes.

Q. And have known him for a number of years? A. I have known Mr. Griffith for very nearly twenty years.

Q. He is not recognized as a mining engineering

authority in that region, is he? A. Really, I know him as a geological authority. 6265

Q. He is not recognized as an authority in mining engineering? A. I did not know that he undertook to be a mining engineer. He considers himself as a mining geologist, I believe.

Q. Do you know whether or not at the Centralia operation of the Lehigh Valley Coal Company in the Schuylkill region, there exists a condition similar to that described in the Lykens operation? A. I do not.

Q. Now, upon this proposition of returning the culm and other waste material to the mines, is it or is it not a fact that in many instances that cannot be returned? A. It can only be returned where the culm can reach the workings by gravity and where the water can be taken care of, but as there is only about ten or twelve per cent. of the excavation in culm to be returned, why the place—— 6266

Q. In other words, the excavation of the hole made by the removal of the mass as compared with the culm which is to be put back into the hole is that the culm is only about ten per cent. of the stuff that comes out of that hole? A. It is about ten per cent.; but its volume is about ten to fifteen. 6267

Q. Therefore, under such condition where it is available it is impossible to fill the hole, is it? A. No; it is used to fill certain danger points or merely to dispose of it. In some instances it is used to fill points where specially considered advisable principally for supporting purposes and in other instances put in to dispose of the culm with the hope of later getting a little more coal from the pillars in some instances. 6268

Q. It was not a panacea, therefore, for the difficulties which arise in mining cases? A. No, and it is only useful to a small extent. The filling with the culm is not by any means perfect support; the culm will crush from twenty-five to forty per cent. of the weight, so that at best it is—if a mine fills with culm and the fillers go the surface is bound to settle until it presses the culm sufficient to carry the superimposed weight, and that will crush the culm from twenty-five to forty per cent., and

6269 in cases fifty per cent. of its original flush thickness. The only support from the culm is where it is flushed in with water and packed by hydraulic.

Q. On flat veins you cannot get it in, can you? A. Not without great difficulty; not commercially. It has been put in flat veins under special conditions only.

Q. In places where by extraordinary exertion and extent it has been put in flat veins the moment the pressure goes on it it goes right down? A. It settles from twenty-five to forty per cent. and in cases fifty per cent.,
6270 depending on how well it is flushed in.

Q. Now, taking into account the comparatively small amount of that material which may be put into the mine, does it have any very considerable effect upon increasing the amount of coal that can be mined? A. No; I don't regard the flushing of culm as appreciably affecting the coal to be won. Its purpose is generally to provide a certain amount of protection against surface settlement rather than to win coal. In some few cases coal has been won from flushing, but not by any means in general.

6271 Q. The impression which I get from the expression of Government Counsel to you was that it seemed to be in their minds that by means of this flushing the life of the property flushed would be very largely extended and much greater quantities of coal would be mined therefrom, is that so? A. Well, at best there can be only about fifteen per cent. of the openings filled with flushing, and the amount of coal that can be taken in the pillars as the result of flushing is not at all well determined. It is questionable whether any more can
6272 be taken in flushed territory than can be taken in unflushed territory, but it is certain that where flushing can be done under a built up surface that is a help.

Q. In supporting the surface? A. Yes, and under those conditions a little more coal could probably be safely taken with flushing than could be taken without it.

Q. Now, as to the yield; don't you know that in arriving at the values of coal land in mining for the purposes of taxation all veins of coal under two and a half feet

in thickness are absolutely eliminated as worthless at 6273
the present time? A. That is my understanding of it. I think two and a half feet is the limit that they accept—that is, of coal—not a bed.

Q. Counsel for the Government as I recall it, seemed to get you to say that out of three tons of coal in the ground two tons of coal under improved and modern methods and the increased art of mining went to market as against one ton in three being wasted, is that correct? A. Not as you formulate it.

Q. What do you mean by that? A. The removal from 6274
the solid ranges in various conditions are as low as fifty per cent. under unfavorable conditions, and as high as eighty-five or even ninety per cent. under extremely favorable conditions. The average under present normal conditions in the Wyoming field, the Wyoming-Lackawanna field, would probably be in the vicinity of seventy-five per cent.; that is subject to the highest in mining and preparation; it might be between twenty and twenty-five per cent. on the average. The mining loss in various examinations I have made in the last few years have ranged from forty per cent. down to as low 6275
as sixteen. Sixteen per cent. was the minimum mining and preparation and fuel loss—that last includes fuel.

Q. So that if any such proportion of coal tonnage which he made you say in that question is actually gotten out of it, no such proportion can be gotten out and sent to market? A. No, I have stated there is the method of preparation and fuel loss on all coal mined, and I have given you the limits within my experience of that loss.

Q. Government counsel has in some of his questions to 6276
you, as I recall it, made use of the term "foot acre"; what do you mean by foot acre? A. Foot acre is an acre of coal one foot thick.

Q. The valuation of coal for the purposes of taxation, both in the Lackawanna and Luzerne regions, in the Wyoming region generally, attempts have been made sometimes successfully, have they not, to base that valuation upon a foot acre basis? A. The valuation was based on a foot acre basis for very many years.

6277 Q. And it still continues to be so based up in Lackawanna, doesn't it? A. I think at the present time it is really based on a foot acre valuation in Luzerne County, although on account of the decisions of the court that foot acre is not the proper measure the word "foot acre" is avoided and rather awkward calculations are made to avoid the apparent use of the foot acre. As a matter of fact the foot acre is still the basis of assessment.

6278 Q. Now, by that the assessing authorities generally take a piece of land of a given superficial acreage and they ascertain the total thickness of the coal under the surface of that land, don't they? A. No, not exactly.

Q. You explain it? A. They take a certain acreage of land and obtain the total cubic feet of coal under that land to the best of their ability; they divide that cubic feet by the area of the land and get an average thickness as spread over the whole land.

Q. In a supposititious single mass? A. Yes. That is what they do to-day.

6279 Q. Then what do they do with that? A. Then they put that into foot acres and soak us.

By Mr. Warren:

Q. Mr. Norris, were you ever in any one of the breakers of the Connell Anthracite Coal Company? Or the Northern Anthracite Coal Company or the O'Boyle-Foy Anthracite Coal Company and in the Bernice region? A. I was in one breaker, but I don't think I knew who it belonged to. I was up there on other business and walked through the district.

6280 Q. If you know, will you tell us whether the methods of preparation of this coal are similar as between the mining in the Bernice region and that in the Luzerne mines? A. The methods of mining and preparation are generally similar. I could not state that the ratio in the breakers is the same for I did not measure it up. The breakers are not by any means up to the standard of the breakers we know in the anthracite region.

Q. Do you know the difference, chemically speaking, between the coal in the Bernice region and in the Wyom-

ing region so-called? A. Yes; the coal in the Bernice 6281
region has a larger percentage of volatile hydro-carbons, and less percentage of fixed carbon than the hard coals of the main anthracite region. To the best of my recollection it is very similar, if not identical, with the Lykens Valley so-called Franklin red ash coal of the Lykens region, and contains about eight to nine per cent. of volatile-hydro-carbon.

Q. That is classified as anthracite? A. Yes, both of those coals would chemically and properly be classed as semi-anthracites. They are what we know as within the 6282
strict anthracite class.

Q. In response to a question of Mr. Gordon, if I recall it correctly, you stated that there was in these days a larger proportion of smaller sizes made as a merchantable commodity than in former days, did you not? A. I did.

Q. In breaking down lump, steamer, stove and the other sizes popularly spoken of as prepared coal to smaller sizes of which you did make mention, what have you to say as to the loss incident to the breaking down of such sizes; that is to say, the passing of coal through 6283
the rolls which is essential to break it down to a smaller size than what it is really causes a waste, does it not? A. Yes. The sizes broken down are lump, steamer, broken and egg; the breaking of stove is a very rare instance. I mention stove, but it is a rare thing that stove coal is broken down.

By Mr. Machen:

Q. Lump coal is the coal that comes out of the mine? A. No. Coal comes out of the mine in all sizes; the 6284
lump coal is the coal which passes over bars six inches apart as it comes out of the mine. The mine car is dumped and it passes over a series of fixed bars which are between six inches clear apart. The coal that goes over that is known as lump coal. From those bars it goes over another series of bars three and a half inches apart; that coal is steamer coal; in some cases the steamer passes over rods having screens with a four inch square mesh, which also produces steamer coal.

6285 Mr. Boles: Lump coal means everything that will go over the six inch bars up to the size of a piece a man can lift, I suppose?

The Witness: Well, up to the size that is in the car. In many cases it is considerably larger than one man can lift.

Q. How about the marketability of so-called lump coal? A. There is practically no market for lump coal. There is no market for steamer, practically none for
6286 lump and very little for broken. All three of those sizes are now broken down.

Q. What would you say was the difference between a geological engineer and a mining engineer; you spoke of Mr. Griffith of whom the counsel for the Government made enquiries as being, as you understood it, a mining engineer? A. He is a mining geologist.

Q. What is the difference between a mining geologist and a mining engineer from your experience? A. A mining geologist spends the great bulk of his time and thought on the deposition and formation of a deposit.
6287 The mining engineer generally spends the greater part of his time and thought on methods of getting it out.

Q. Which of the two would have the better opportunity to ascertain the practical condition as to the beds in this particular region? A. The mining geologist would be more apt to know accurately the areas of the beds, and the mining engineer would be more apt to know accurately the amount that would be yielded from them.

Q. Now, would not the mining geologist assume in the absence of values appearing on the surface the regu-
6288 larity of the bed in the absence of some evidence to the contrary? A. Not necessarily, no.

Q. Might he not? A. It depends on the man. A mining geologist would be as apt as a mining engineer to determine the probable values.

Q. Well, Mr. Norris, don't you know from your experience as a mining engineer that crushes in large numbers, in the Northern field at any rate, apparently results in the flattened and squeezed conditions of which there is no evidence until you get right to the face of

the chambers where the work is going on? A. Yes; but either the mining engineer or geologist would determine that. They both would be inclined to take the evidence that was apparent on the surface and as far as they could examine underground, and both would probably discount that for possibilities. I know that I should and always do discount for things that might be in there as a matter of conservatism. 6289

Q. Which of the two would be better qualified to pass upon how much coal was going to be obtained for a given superficial acreage of coal lands, even though it was within the deposits of anthracite coal? A. I should prefer the mining engineer, except possibly in the case of absolutely unopened and unknown deposits, where the work was entirely from the surface indications, in which case the geologist would be as apt, or more apt, to be accurate than the mining engineer. 6290

By Mr. Wheaton:

Q. Let me ask you a question. Suppose you showed the mining geologist and the mining engineer the vein, put them right in contact with it, and showed them the vein, which one of the two would be better qualified to state the workability of it? A. The mining engineer. 6291

Mr. Machen: I object to all this enquiry as to the relative advantages of a mining geologist or a geological engineer.

The Witness: Now, may I continue my answer as to the breakage?

By Mr. Warren:

Q. Sure. A. I have here a number of tests of breaking down large sizes which show taking one hundred per cent. of lump coal put in the rolls an average from eighty-two per cent. in prepared coal to fourteen in small sizes, and about four per cent. of dirt. 6292

Q. Do you know a gentleman by the name of Frederick E. Saward? A. I have met him a number of times.

Q. He is the editor here in this state of the journal known as the "Coal Trade Journal," is he not? A. Yes.

6293 Q. He is a gentleman of mature years, is he? A. I think he is a man about fifty-five, on a guess.

Q. Wouldn't you assume that was mature years? A. Yes.

Q. I want to read to you, as counsel for the Government, Mr. Gordon has read to you, out of a production of his, something from the Coal Trade Journal headed 1913; "The coal trade. By Frederick E. Saward," a publication entitled "A compendium of valuable information relative to coal production, prices, transporta-
6294 tion, etc. At home and abroad with many facts worthy of preservation for future reference. By Frederick E. Saward, editor of The Coal Trade Journal, 20 Vesey Street, New York. Fortieth consecutive year of publication."

Mr. Machen: We object to the reading from this publication as hearsay and otherwise inadmissable.

Q. I will read from page 131: "It would seem that
6295 the capricious public never thinks coal should go up in price, rather that it should continually go down. It may be said here that the indications are that coal will never again be as cheap as it has been during the last few years. Exhaustion of seams that have been relatively inexpensive to mine and near to great consuming centers forbids any such prices as have ruled. Better mining, in order to practice conservation of resources, has also added to mining cost, and more care in preparation of the coal at mines for the markets is also a factor that enters into this aspect of the industry as it is now
6296 conducted. Acreage, too, has advanced, and taxation on unmined and undeveloped acreage is a yearly charge that now challenges attention. Moreover, it is in harmony with all other natural and manufactured products that higher prices for coal are justified. Supplies cost more than they did even a year ago, labor cost is continually increasing and all the facts and factors justify the advance, however much the consumers may squeal." What have you to say as to the propriety of

that observation by this editor of the Coal Trade Journal? 6297

Mr. Machen: Objected to as leading.

A. It is an unfortunate fact that the best and cheapest part of the anthracite coal has been very largely exhausted. There is relatively very, very little coal left which is available now for what is known as water level mining; that is, by tunnelling from the surface and draining out the water directly. With the cheaper mining gone, thinner seams, the ventilation and transportation and development are all rapidly increasing in price, and I think Mr. Saward is entirely justified in his prediction that the price of coal will ultimately have to increase. 6298

Q. Do you know how long the wage agreement was continued of which you have spoken that went into effect in May, 1912? A. Four years.

Q. I would like to call your attention to another extract from this valuable Coal Trade Journal: Machinery has been introduced to expedite underground haulage, but that is hardly an economy. It is expensive to buy and expensive to maintain. It is doubtful if it would have been bought if tonnage could have maintained under old methods. But as a matter of fact the long hauls underground due to the exhaustion of the old mines made rapid transit in the main gangways essential and the electric motor has been introduced, expensive though it is, with that object in view. This widening, deepening expanse of the mines is a great factor. More expensive pumping is now required, ventilation is more of a problem and before his eyes the mine manager has ever present the absolute certainty of early exhaustion which will make all his underground investment a total loss. Dead work is a larger item every year." 6299 6300

Q. Now, Mr. Norris, if a man, or a concern, had two or more collieries, having in mind the theory of conservation of mineral resources, could he afford to work the two, although the one might not be able to be worked at a profit, but the other might be? A. That is done

6301 all over the region. There are a number of notoriously unprofitable collieries that are worked in connection with profitable ones under the same ownership.

Q. Of the same person or the same concern? A. Under the same ownership.

Q. I understood Mr. Gordon to ask you to go into the realm of probability and the likelihood of things, and he asked if it would not be likely that in case the price could be advanced if the two foot vein of coal can be mined—if I am right in that, and I think I recall
6302 it substantially correct—what would you say, having in mind now the theory of conservation of mineral resources as to the desirability of the price advancing to enable the two foot vein which to-day is not a workable proposition being conserved and removed from the bed? A. There is a very large amount of coal in the anthracite region in beds that are not now commercially minable, which coal is left there under present conditions. With increased prices such coal would undoubtedly, or portions of it at least, would undoubt-
6303 edly be mined. The unfortunate part of it is that in the course of mining the total removal of one bed ordinarily destroys overlying beds, so that if such small beds lie above the horizontal horizon of a larger bed and are not removed now they will be very largely destroyed and not be removable at some later time when the supposititious price might enable them to be removed.

Q. And, therefore, what is your opinion as to the question of a price? A. Well, the price ought to be greater right now.

6304 Q. What have you to say as to the correctness or otherwise of those observations? A. The haulage cost is undoubtedly reduced per ton mile by the introduction of mechanical haulage, the ventilation and pumping increased naturally with the extent of the mine, and the question of exhaustion it is dependent upon the resources for the particular colliery. Collieries exist now with one hundred year reservations and others with two years reservations.

Q. There is a still more interesting paragraph on this page 119, which I would like to read: "Anthracite

mining is becoming more expensive all the time. All 6305
supplies cost more than they did ten years ago. The patient mule is now an expensive proposition. In the days of cheap coal the mule cost about $125, ten years ago he cost, say $175, now he costs $350—and there are 40,000 mules in the hard coal mines. There has to be replacement to the extent of 4,000 a year. That is only a single item. Machinery, rails, pumps, oil and rope cost more money. Lumber in every form costs more money. This is a very important item. As the mines go deeper more timbering is necessary and the props 6306
which were once outside the mine portal are now brought from Georgia or Florida." What have you to say as to the correctness of those observations as to the increased cost? A. The cost of mules has increased very materially. I have not had occasion to know their cost within the last few years, but I will agree to the $175 of some years ago. The props are not generally brought from Georgia or Florida; they are mostly brought from Pennsylvania or nearby states. The increased depth does not necessarily increase the amount of timbering in a mine; that is dependent very much more upon the 6307
character of the roof than upon the depth of the mining, and also dependent upon the system of mining adopted. That is, when the chamber is compared with the width of pillar, but as I say, mostly dependent upon the character of roof; a weak roof requires very much more timbering than a strong one. This roof timbering is not to hold the load of the superimposed strata, because that would be impossible; it is to hold the loose part of the roof which frequently falls immediately upon the mining; overlying many beds are from one 6308
or two feet to as high as twenty or thirty feet of weak strata, which has a tendency to fall as soon as the coal is removed; that is held by timbers.

Q. Notwithstanding your criticism of this lengthy haul of the timber from Georgia, that is closer than a New York editor generally gets as to this or any observation associated with mining, isn't it? A. That is as close as the editor of the daily paper used to get.

6309 By Mr. Wheaton:

Q. To what extent, Mr. Norris, is electric haulage available; in other words, is it available for short hauls, I mean economical? A. No; electric haulage is not usually used in very short hauls; the collecting haulage is usually done almost entirely by mules.

Q. You cannot get up in the chambers with electric haulage, can you? A. No, except on very flat workings it is not customary to get up in the chambers with the electric haulage; it does not operate. The electric
6310 motor is used for the general mine transportation and the collecting is ordinarily done still by mules or by hand. I might add to Major Warren's last extract, I think that ten per cent. replacement for mules is very much under-estimated. The average life of a colliery mule in my experience has been about five years, not ten, and this practically adds twenty per cent. expense to every year instead of ten.

By Mr. Warren:

Q. Hasn't everything increased very much in price?
6311 A. Oh, yes, everything has increased in price.

By Mr. Wheaton:

Q. Are there not places where it is physically possible to get electricity for carriage up into the chamber. It would be constantly exposed to the danger of being blown out, wouldn't it? A. Wires can only be taken up in the chamber by the reel method. Gathering motors are now equipped with a cable on a reel, the unconnected cable is attached to the trolley wire in the mine and the
6312 reel pays it out as the motor runs from the trolley wire. It would be impossible to take trolley wires in chambers.

Q. Electric haulage, therefore, is one of the important things spoken of in the advancement of the art of mining and is only available for long hauls and through main haulage ways, isn't it? A. That is, it is generally used for relatively long hauls and for main haulage ways. In some few instances rope haulage is used, which is still more expensive.

Q. Now, another thing, the areas of the anthracite coal deposits are pretty well ascertained, aren't they? A. Yes. 6313

Q. And they are limited, aren't they? A. Very much so.

Q. And they are limited to the districts up there in Pennsylvania enumerated in this case? A. I have not heard the enumeration.

Q. Well, they are limited to three or four regions up there in comparatively small territorial area in the State of Pennsylvania? A. Yes.

Q. For the last, we will say, twenty years the acquisition of virgin coal lands has practically been exceedingly difficult, if not impossible, hasn't it? A. There is very little virgin coal lands that have come under my notice in years. 6314

Q. Practically twenty years ago most of the virgin land was picked up and most of it developed? A. There is very little absolutely virgin coal lands anywhere in the region.

Mr. Gordon: Were you speaking of any particular region? 6315

The Witness: Anywhere in the anthracite region there is very little virgin coal left considering large tracts that have not been touched. Of course, there is a great deal of virgin coal in beds. There are very little large areas that have not been touched in some way, but there is a great deal of coal in certain beds and on certain properties that has never been opened.

Q. I am speaking of it generally from the standpoint of the man or the corporation going out to acquire it, in that sense it had been picked up, hadn't it, twenty years ago? A. Yes. 6316

Q. Now, anthracite coal as you have already testified is not a sort of renewing product, is it? A. No, anthracite coal does not renew itself.

Q. When you mine it out once it is gone forever, isn't it? A. Yes.

6317 Q. Therefore, a man or a set of men or a corporation engaged in the anthracite coal business, in the ordinary and normal progress of its business and with ordinarily good forethought would go out, wouldn't they, from time to time, and procure additional coal area if they expected to continue in business? A. That has been the procedure.

Q. They would have to do that, wouldn't they? A. Or go out of business.

Q. Or else upon the exhaustion of whatever they hap-
6318 pened to have they would have to go out of business, wouldn't they? A. Yes.

Q. And after the time had come when it was practically impossible for a man or a corporation of a set of men engaged in that business to acquire virgin tracts of coal land if they wanted to acquire coal lands for further continuance of their business and the normal development of it they would have to buy or lease lands that some other fellow perhaps had partly developed, wouldn't they? A. That has been the course.

Q. Or start with companies where development has to
6319 a certain extent progressed? A. That has been the course.

Q. And without that they would have to go out of business now, wouldn't they? A. I don't know how they would continue in business after the coal was exhausted.

Q. Now, another thing; in your observation hasn't the cost of the various improvements in the advance of the art of mining which has been incurred, been upon the basis of the acquisition of additional coal lands and with a further continuance in business in view? A. I
6320 couldn't say the purpose of the development. The development has been made only where the amount of coal tributary or naturally tributary to an operation warrants them. In some cases the coal has not been in the ownership of the people who have made the developments, but there are cases where developments have been made expecting to obtain ownership; in many cases that has been obtained and in some cases not and resulted in failure.

Re-Cross Examination by Mr. Gordon: 6321

Q. Mr. Norris, reading from this red covered book by Frederick E. Saward, from which Major Warren has just read, I wish you would look at the full page advertisement on page 177 and read it?

Mr. Warren: To which I object, as counsel for the Government strenuously objected to my reading an extract from the book and I think what is sauce for the goose ought to be sauce for the gander.

6322

A. Page 177, Coal Trade Journal of 1913, by Frederick E. Saward. An advertising reading "Lehigh Valley," under it "Coal Sales Co. Lehigh Valley Coal Sales Co., shippers of anthracite, Lehigh, Packer, Wyoming, Hazleton, Cross Creek. Sole agents for Jeddo and Highland. G. N. Wilson, president. W. R. Evans, Vice-pres. and Gen'l. Sales Agt. 90 West Street, New York."

Mr. Warren: You forgot to read the trade device, or whatever it is.

The Witness: I read that. 6323

Q. Will you glance through the pages from that page on and see if every other page does not consist of a full page advertisement of some coal selling company? A. Yes, but here are two on a page, Pennsylvania Coal & Coke Corporation and Parrish, Phillips & Company on page 179, two on page 181, two on page 183. I don't see many more single page ones. Every other page is an advertisement of some sort. Meeker & Company, New York, 143 Liberty Street, Detroit, Michigan, Ford Building. Miners and shippers of coal from the Wyoming and Lackawanna Valleys. 6324

Q. In connection with your testimony in regard to the briquetting of coal, I would like to read you an advertisement on page 195 of this same book.

Mr. Warren: Before you read it I would like to object on the ground that you objected to my making any use of the book whatever, and, therefore, you are not privileged in doing any different.

6325 Q. (Reading.) "Robert Devillers, Manufacturer of briquetting machinery specially constructed to briquette American coal. My machinery is used successfully by the Consolidated Gas Company, of New York, to briquette coke breeze; by the Lehigh Coal & Navigation Company, of Philadelphia, to briquette anthracite culm, and by the Phœnix Mining Company, Georges Creek Region, Westernport, Maryland, to briquette bituminous slack." What have you to say in regard to the Devillers briquette machinery? A. I have heard of
6326 Mr. Devillers and have examined his machinery. It is probably as satisfactory as any briquetting machinery. There is no trouble with making machinery. The difficulty, as I have explained before, is with the binder and with the material obtainable. The Devillers briquettes have been made on a very small scale successfully in New York Harbor, using the fine coal that came from breakage or degradation from the prepared sizes, which is unusually pure. The Lehigh Coal & Navigation Company's attempt at briquetting has gone through many years of experiment. They were the last time I
6327 knew making a very small production of briquette. Whether they are still continuing it or not under the new management of Mr. Warriner I don't know. The Lehigh Valley Navigation Company undertook to make briquette from their culm bank of refuse; they found that it contained an average of something over forty per cent. of ash and after many years of experimenting they developed a pneumatic method of separating the fine coal dust from the fine slate dust, and they were the last time I examined it was in 1910, I think, in 1910
6328 they were making a very small production of briquette as far as I could judge at a cost approximating that of prepared coal.

Q. The book in which this advertisement is contained is dated 1913, is it not? A. Yes. I say that is probably the best briquetting machine in the country, and briquetting is entirely practical with bituminous coal.

Q. Don't you know as a fact the Lehigh Valley Railroad Company publishes freight rates on briquettes? A. No, I don't know that.

Q. This journalist, Mr. Saward, is he either a mining 6329
engineer or a mining geologist? A. I don't know.

Q. If he were one of eminence you would have been likely to have heard of him? A. I know Mr. Saward. His business has been as editor and publisher for very many years. What his early education may have been I don't know.

By Mr. Machen:

Q. Mr. Norris, won't you read what appears on the outside of the cover? A. (Reading.) "1913. The Coal 6330
Trade. By Frederick E. Saward. Compliments of Lehigh Valley Sales Company."

Q. That is the outside of this book from which Major Warren and Mr. Gordon have been reading and putting questions to you? A. Yes, and probably in connection with that it is only fair to say that this book is distributed by very many people. I receive a copy some years with the compliments of the Hazard Company, wire rope manufacturers.

By Mr. Warren: 6331

Q. It is also a fact, isn't it, that he publishes a journal that is circulated among those interested in the coal trade generally? A. Yes.

By Mr. Machen:

Q. It is a trade journal devoted to promoting the interests of the trade?

Mr. Warren: I object unless he knows.

A. I don't know what it is devoted to for I never 6332
see it. It is practically a trade journal; it is not a technical magazine or journal.

By Mr. Gordon:

Q. Do you know that Mr. Griffith took part in the geological survey of the State of Pennsylvania? A. Yes.

Q. And particularly in the portion which had to do with the anthracite deposits? A. Yes; he was, I think, one of the members of the Survey.

6333 Q. And had charge of the survey in the Wyoming region? A. I was not aware of that. He was under Mr. Ashburner and later under Mr. Moore. They were both in charge of the anthracite region. I don't think Mr. Griffith ever was geologist in charge of the anthracite region.

Q. I say in Wyoming, a portion of the anthracite region? A. I know the anthracite region survey was made under the charge of Mr. Ashburner, who was later succeeded by Mr. Moore.

6334 Q. What year was that? A. It lasted through a number of years, probably six or seven.

Q. And the results were finally published by 1890? A. The results were published all through the progress of the survey.

Q. It is a very thorough and complete survey? A. Yes; there are sixty or seventy volumes of report.

Q. Made by a careful inspection of the mines themselves and the compilation of the mine maps not owned by the—— A. I think very little is exploration of the mines; they have been mostly a compilation of the mine

6335 maps and data obtained from operators. As far as I know there was very little, if any, anthracite work done by the Survey.

Q. But the usual method of mining geologists for a careful geological survey was carried out? A. It was a very careful geological survey.

Q. He was also a member, was he not, of the Pennsylvania Coal Waste Commission? A. Yes.

Q. Do you know whether he has been consulted as consulting engineer by the United States Bureau of Mines?

6336 A. I do not.

Q. Do you know whether or not he recently acted as a consulting engineer in taking measures to prevent the caving in under the City of Scranton? A. Mr. Ely T. Conner and Mr. Griffith made an examination under the City of Scranton for a commission which was appointed with a view of suggesting methods of safeguarding the city.

Q. Do you know whether or not he recently acted as expert witness on the value of anthracite coal lands by large mining companies? A. I think he has.

Q. Those collieries in addition to the Blackwood col- 6337
liery which you testified were owned by the Lehigh Valley Coal Company in Schuylkill County are not in the southern region? A. No, they are in the western field, except the Blackwood and York Farm, they are in what is known as the Schuylkill region but are not in the southern field.

Q. I read to you from the answer of the Lehigh Valley Railroad Company, in this case, page 15: "This defendant admits that it reaches all three of the trade regions, however, there is but one colliery in the Schuylkill 6338
region located on the line of this defendant called the Blackwood colliery, which has a very small output." Is that a fact? A. No, not in the Schuylkill region. It is in their Schuylkill region, they are reached, but the Schuylkill region is generally known as comprising the western part of the southern and western middle field. That is, among mining men that would not be considered correct, by a mining man.

Q. The Lykens Valley district is in the southern field so-called? A. In the southern field.

Q. Or the southern part of the Schuylkill region? A. 6339
Southern part of the Schuylkill region. It is the western extreme of the minable coal in the southern field.

Q. Located at some distance from the western middle field? A. They are about twelve or fifteen miles in a straight line.

Q. From the nearest point? A. From the nearest point to point.

Q. You testified on re-direct examination by Judge Wheaton that the assessors in the Wyoming region disregarded all coal below two and a half feet in some dis- 6340
tricts and two feet in others as I understand it? A. In Luzerne County it is two and a half, in Lackawanna County, I am not so sure, but I think they went to two feet.

Q. Isn't it true that the veins, the various coal veins, are well known and have distinguishing names? A. Yes.

Q. And throughout the various regions have in general a certain thickness? A. No, they have anything but in general a certain thickness. They have distinguishing names, but the thickness is most variable.

6341 Mr. Wheaton: They have duplicate, triplicate and quadruplicate names, haven't they?

The Witness: Yes; their names are generally local and not persistent throughout the region. For instance, the Mammoth vein of the southern district is probably the same as the Baltimore vein of Plymouth and as the Fort and Cooper vein of the Grassy Land vein of Sterrick Creek and as the Pittston vein of Pittston.

6342 Q. In any one of the regions of the workable measure they have a considerable number of veins lying in separate strata, one above the other? A. Yes.

Q. Aggregating a considerable thickness? A. The thickness varies from two feet, three feet, to sixty or seventy feet and in a few instances very much more than that.

Q. So that even if you disregarded the small veins below two and two and a half feet you will still have in some regions as much as sixty feet workable veins in the aggregate? A. Yes, in certain parts there are some
6343 regions that would average that, and in certain parts there is coal sixty feet.

Q. You testified that there was very little virgin coal remaining on the market; did you not mean to testify, of course, that there were not large areas of virgin coal still remaining in existence? A. Except in the southern field there are not very large areas which you could properly term virgin coal remaining. Most all of the coal has been opened to some extent.

Q. In other words, the virgin coal which remains is
6344 in possession of some company and being held in a virgin condition to suit the purpose of that company? A. No, the virgin coal that is left in the seams is in possession of all the mining properties. There are practically no properties that have not more or less virgin coal. The distinction that I perhaps tried to make is what virgin areas that are entirely unopened and, therefore, practically unexplored. There is relatively little of that left in any possession.

Q. Taking the Reading Company, for instance, isn't 6345
that a fact that they have considerable areas of land which are held in reserve and not being worked at the present time? A. The Reading Company have large amounts of coal lands which are not being worked.

Q. That would be true of other companies? A. That would be true of all the companies, that they have considerable amounts of coal, but not necessarily considerable areas of land. For instance, in many cases the upper veins are being worked and the lower veins are properly held as reserve to be mined after the upper 6346
veins have been removed.

Q. You say not necessarily considerable areas of land; is it not true that some of the companies do have considerable areas of land? A. You mean that are entirely virgin?

Q. No, their total holdings? A. Oh, their total holdings are very large, yes.

Q. You would call 30,000 acres a very considerable holding? A. Yes, and all the large companies have large land holdings.

Q. The preparation of coal in present commercial sizes 6347
has been carried on for a good many years, has it not? A. The preparation of coal started in the late 60's with a few sizes and the sizes have been added to as the market conditions and as mining conditions required. The present sizes have existed for perhaps twenty years, although twenty years ago No. 3 Buckwheat or Barley coal was hardly a marketable commodity; it was used, however, in boiler plants at the mines.

Q. And to get these various prepared sizes which are required by the market it has been necessary for the 6348
last twenty years to break down coal into smaller sizes? A. A certain amount of coal has been broken down for many years and the breaking down has increased in later years. The original breaking down as I knew when I came in the region was generally of the more impure coal, the purer coal being shipped in the sizes it came from the mines. At the present time practically everything above egg is broken down.

Q. And that has been the case in general for a considerable number of years, has it not? A. No, the

6349 breaking down of egg is relatively recent. It has been a progressive breaking down as the market demanded more and more of the chestnut and stove sizes. The only way to produce them was to break down the larger sizes, and there has been an increasing amount of breaking down which, I think, is still continuing.

Q. But lump and steam have been broken down for a good many years? A. Yes, broken down ever since I have been in the region to at least some extent. There was perhaps ten per cent. of lump shipped in 1885 when
6350 I first went into the anthracite region and three or four per cent. of steamer.

Q. How much was it in 1895? A. I think there might have been three or four per cent. of lump and no steamer; that would be largely a guess.

Q. So this breaking down of lump or broken coal is not recent? A. No; the breaking down of egg, however, has come in in recent years.

Q. Egg is still sold? A. Egg is still sold and so is broken, but the percentage is very much less than it was a few years ago. There is an increasing tendency
6351 to break down the stove and egg coal.

By Mr. Machen:

Q. The stove and chestnut sizes are so much higher priced than broken and lump coal that it pays to break them down in order to realize the higher price? A. I don't know that it is altogether to realize the higher price, if there is one. I am not familiar with the details of the price, but it is also because the market merely won't take the larger sizes. The use to which they were
6352 previously put has been largely taken by bituminous coal.

By Mr. Gordon:

Q. Does Bernice coal have the same lustrous, glistening appearance that the standard varieties of anthracite have? A. No, I think not. It has more the appearance of the Lykens Valley coal, which is a dull coal.

Q. Dull and lustreless? A. Yes. I haven't seen the Bernice coal for some years, and I might easily be mistaken. It is four or five years since I have been up there.

Q. It is soft and friable? A. Yes. 6353

Q. It will not stand transportation without serious deterioration? A. No, I wouldn't say that. Experience has shown that there is practically no loss in the actual transportation of coal; the loss is in the loading and unloading of cars. It would not stand very many transshipments. Well, what would be true of the Lykens Valley coal would probably be true of the Bernice, although I don't know it of my own knowledge.

Q. You have not enough knowledge of the shipment of Bernice coal to say that? A. No. I can only predi- 6354
cate on my knowledge of the shipment of Lykens Valley coal in which we have found no deterioration in the cars after they were loaded; the deterioration was all in the unloading or handling.

By Mr. Machen:

Q. Is any Lykens Valley coal shipped to New York Harbor for transshipment by water? A. Yes; most of it goes that way, or a great deal of it goes that way.

By Mr. Wheaton: 6355

Q. What you refer to as virgin coal land in the southern field is not profitable to mine now, is it? A. Much of it is not; it is too deep.

Q. And as to breaking down egg it is not profitable to break down egg, is it? A. I never considered it so.

Q. They break down egg at a loss because they have to, don't they? A. That is my understanding.

Q. They break it down because they cannot sell all of it? A. That is my understanding for the reason of breaking down. I am not sufficiently familiar with sale 6356
prices to know whether it is profitable or not.

Hearing adjourned to Monday, July 27th, 1914, at 10.00 o'clock A. M.

6357 UNITED STATES vs. LEHIGH VALLEY R. R. Co.

New York, July 27th, 1914, 10 A. M.

Hearing resumed pursuant to adjournment.

APPEARANCES SAME AS BEFORE.

John Markle, called on behalf of Lehigh Valley Coal Company, being duly sworn, testified as follows:

Direct Examination by Mr. Wheaton:

6358 Q. You are the president of the G. B. Markle Company? A. I am.

Q. Have you had such charge and management and business control of the G. B. Markle Company since the year 1880? A. I have.

Q. Continuously since that time? A. I have.

Q. As president of the G. B. Markle Company you executed the answer filed to the petition of the United States in this pending case? A. I did.

Q. I want to ask you now the general question whether the allegations set forth in that answer are true and
6359 correct.

Mr. Machen: Objected to as leading and too general.

Q. You many answer. A. My answer is that after due and careful deliberation that is absolutely correct.

Q. Now, referring to an allegation of the Government that a certain contract referred to, a copy of which is referred to in the petition of the United States, in said pending case, to wit, a contract of December 30th, 1889,
6360 between the G. B. Markle Company, and the Lehigh Valley Coal Company, was made for the purpose of monopolizing the transportation and sale of anthracite coal produced along the lines of the Lehigh Valley Railroad. I want you to state whether or not that contract was made for any such purpose as that? A. None whatever; no such thought was ever in our minds.

Q. I wish you would go right on and state in your own way first whether there had been a similar contract between the Lehigh Valley Coal Company and the G. B.

Markle, beginning with the year 1877 and preceding 6361
the contract of December 30th, 1889? A. There was such a contract between G. B. Markle Company and the Lehigh Valley Coal Company. I think it was executed in 1877; and if my memory serves me right, and that was in force up to sometime in 1889 when the leases on the coal properties were to expire, and this specific contract that you are referring to now is very similar in nature to that first contract with some modifications which I had done as it was very much better to our business.

Q. Now, specifically with respect to the contract of 6362
December 30th, 1877, I wish you would state whether or not it was made between two independent parties as and for themselves for legitimate purposes? A. Absolutely, unquestionably.

Q. For what? A. Purely and simply as set forth in the said contract.

Q. For purely legitimate purposes? A. Absolutely. We were mining coal and we wanted to have somebody to handle that coal and dispose of it.

Q. Now, state, if you will, what mutual advantage did 6363
influence the entry into that contract as to each of them. A. I took charge in the Fall of 1880, and I had an experience with the old contract up to the end of 1889, and we were only desirous of making a good contract with the Lehigh Valley Coal Company. The Lehigh Valley Coal Company were one of the largest coal companies at first, and took over the sale of their own business, had their own selling department, and in doing so they had created offices all over the country, which I looked upon as a very great advantage to us in having 6364
all those offices to handle our coal. The result is that we are working on in view of the fact of having orders on our books year in and year out.

Q. In other words, the effect then of the working out of that contract was that there was no restriction placed upon your output at all? A. None whatever. I would like to say that we naturally realized that this Contract was of mutual advantage to the Lehigh Valley Coal Company in the handling of our product, because

6365 they were able to dispose of a certain percentage of their own coal. In other words, a great many purchasers of our coal could not get all they wanted and they would sell a certain portion of their production, allow them to have a certain portion of our coal and a portion of their own, which was to their advantage.

Q. And therefore it was mutually beneficial? A. Absolutely.

Q. Have you ever considered, or so far as you know, has the Lehigh Valley Coal Company down to the 1st of
6366 March, 1912, ever considered or at any other time for that matter, that you were confined to any particular railroad, say the Lehigh Valley Railroad, as to transporting your coal?

Mr. Machen: Objected to as calling for a matter of opinion and otherwise inadmissible.

Q. What would you say about that? A. No, nothing of the kind.

Q. What representation, preference, discrimination,
6367 advances or advantages, in the language of the Government in its petition has ever been offered or conferred upon you, in any way, manner, whatsoever on account of this contract? A. None.

Q. Has any ever been? A. Not to my knowledge. I would like to add one other thing on this question: We haven't a scratch of a pen as to a contract between the Lehigh Vally Railroad Company and ourselves to ship one pound of coal over them. Can I add this statement, which to my mind was a condition that existed, and that is, this other coal has all been sold at a premium,
6368 above the price of other coal sold, and naturally I consider it is the best coal that goes to the market, and sold to our customers, or they wouldn't buy it. I add this to let you know that it was to the advantage in my judgment of the Lehigh Valley Coal Company to make that contract as between us, to have that advantage of disposing of a certain percentage of their coal, because this demand for our coal, we could not begin in certain seasons of the year to fill our orders for.

Cross-Examination by Mr. Machen: 6369

Q. Mr. Markle, is your only contract with the Lehigh Valley Coal Company, or the Lehigh Valley Railroad Company, the contract between your corporation, or your firm, as it was then, and the Lehigh Valley Coal Company, which is dated, I think, some time in the year 1889, and a copy of which is filed with the petition in this case? A. It gives the Railroad Company——

Q. I say the only contract in force between your firm, or your corporation, and either the Railroad or the Coal Company, is that contract with the Coal Company? A. 6370
We have no contract of any nature whatsoever with the Lehigh Valley Railroad Company, and the only contract in existence for handling our coal is this contract with the Lehigh Valley Coal Company and now handled by the Lehigh Valley Coal Sales Company.

Q. And that contract is in force and is carried out? A. Absolutely.

Q. Have you ever been a director of the Lehigh Valley Railroad? A. No, I have not.

Q. Was any member of your firm ever a director of 6371
the Lehigh Valley Railroad? A. My father was.

Q. Do you remember during what years? A. I could not tell you. A great many years ago, up to the time of his death in 1888. For many years before that, I could not tell you that.

Q. You spoke of your leases expiring about the year 1889; were any of these leases held from the Lehigh Valley Coal Company or any other company subsidiary to the Lehigh Valley Railroad Company? A. No, sir; I can give you the names of the company; the Union Improvement Company and the Highland Coal Company. 6372

Q. Did the Lehigh Valley Railroad Company ever have an interest in your firm? A. Asa Packer became a partner of my father, I think, in 1877.

Mr. Wheaton: That was as an individual, wasn't it?

The Witness: Individually, yes.

6373 Q. Did not Mr. E. P. Wilbur have an interest in your firm as representing the Lehigh Valley Railroad? A. Mr. E. P. Wilbur individually.

Q. Not as the representative of the railroad? A. I have no knowledge of the fact. All I know is E. P. Wilbur was the individual in the copartnership.

Q. All that you knew of was Mr. Wilbur? A. That and nobody else.

Q. And you have no knowledge of the purpose or objects or intent of the Railroad Company, the Lehigh
6374 Valley Railroad Company? A. No; I did not know the Railroad Company had anything to do with it.

Q. Then when you speak of your company entering into the contract of 1889, you mean the object of the Markle Company, or G. B. Markle & Company? A. It was a copartnership of G. B. Markle & Company.

Q. You mean the object of the G. B. Markle Company entering into the contract? A. Absolutely. I considered it mutually advantageous to both corporations.

Q. But when you speak of the object of course you speak only of your own purpose and cannot answer for
6375 their purpose? A. Which I knew was to their advantage.

Q. Those which you mentioned in your direct examination? A. Yes. I cannot tell you how many more advantages were in their mind.

Q. And you meant it was not one of your motives in entering into that contract in any respect to restrain trade or to monopolize the coal business? A. Never such a thought entered my mind. I cannot answer for them.

6376 Q. In what market is your coal sold, or chiefly sold? A. A great deal of it is sold along the lines of the Lehigh Valley Railroad, New York and Amboy, and all New England and Middle West; in fact, we ship coal as far west as California.

Q. It is shipped over the Lehigh Valley Railroad, isn't it, as initial carrier, isn't it? A. The initial road is the Lehigh Valley.

Q. And the routing is left to the initial carrier? A. We receive the order and on that order are the shipping

directions, and we went to work and shipped accordingly. 6377

Q. Those directions were put upon it by the Lehigh Valley Coal Company? A. Lehigh Valley Coal Company naturally was the sales agent.

Q. They are your sales agent and you follow the directions which they give? A. Naturally, as if we held the sales end of the business and we would give the same information.

Q. Does the Lehigh Valley Coal Company pay the freight charges to the Lehigh Valley Railroad Company and then collect from you? A. Just exactly as the contract specifies. It is in the contract and so specified. 6378

Q. I am asking you what is actually done? A. Absolutely, yes.

Q. The Lehigh Valley Coal Company pays the charges? A. Let me answer that in this way. All of our orders with the exception of tidal points are the prices at the mines. We know nothing beyond that the Lehigh Valley Coal Sales Company pay us on that basis monthly. Now, the tidal coal that is shipped down there —on account of the conditions of the anthracite coal business at seasons of year certain sizes are not marketable, and they had to have storage facilities, and it went into storage down here and then it was sold at the price at the mines less the freight rates. 6379

Q. Do you mean to say that for coal that goes elsewhere than to tide water you are paid a certain price or less? A. The price that we accept under our contract. We named the price to them on every ton sold, and they cannot sell a ton of coal without our consent as to the price.

Q. Then it makes no difference to you at what price they sell the coal? A. A very great difference. In other words, they sell at the price we name, they do not sell a pound—we notify them promptly of what our prices are subject to change at any time. 6380

Q. I thought you said you sold it at the mines? A. They gave us a mine price.

Q. And you accept that mine price? A. We notify them we will take a certain price and they so specify on the orders with the exception of tidal coal.

6381 Q. And do they buy the coal from you at the mine? A. They do not buy it. They are purely and simply our agents. Under our contract they are to provide to pay the Railroad Company the freight and they then account for the freight. We know the price they are selling at. We don't know the destination because it goes over various railroads in various sections of the country. We only know the freight rates between our mines and tidai points.

6382 Q. When the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company deliver an order to you do they simply name a price at the mines, which you accept or not? A. We notify them in advance that they can sell our coal for this month for the price named on the various sizes only. That is the mine price.

Mr. Wheaton: Who fixes that price?
The Witness: We do.
Mr. Wheaton: You fix the price?
The Witness: Absolutely.

6383 Q. And they accept it? A. They cannot sell it unless they do.

Q. And when they accept it makes no difference to you what price they get for it; they can get any amount at all if they succeed in getting it? A. If we found out they were getting more we would see that we got it, don't you worry about that. And in respect to that we send our information all over the country to our customers. We individually get in contact with them. In other words, we see whether the Lehigh Valley Coal Company are carrying out to the letter of the law the
6384 whole business of our contract, and we have to watch those fellows.

Q. How much do you realize at your mines for your coal? A. I prefer not to answer that. I can answer by saying the prices are satisfactory and also that they are higher prices than what I understand other coal is sold for.

Q. Let me see if I understand you correctly. You make a certain price at the mine, we will say $3, or whatever the price may be, then the Lehigh Valley Coal

Company or the Lehigh Valley Coal Sales Company is 6385
free to sell your coal anywhere in any market that they can reach at that price plus; then the freight is added to it, whatever the freight may be? A. That is, if the price is acceptable to us. In other words, we name the price, and they give us an order with the price specified at the mines with the exception as I have told you all along, tidal coal; that coal goes into stock down here.

Q. What is the arrangement as to that? A. We name the price there. But that is a tidal price there, and then the freight rate is deducted. It nets us our price at 6386
the mines and when they give us a monthly statement they give us our statement at the mine price for that, which is the price which we authorize sold at.

Q. How do you know whether the Coal Sales Company or the Coal Company on coal which is sold elsewhere than at tide water receives more than your price at the mines plus the cost of transportation? A. I am egotistical enough to say that by God I do know.

Q. How do you know? A. I keep in touch to know. I propose to get every cent that that coal can yield. I
don't care whether they dump it in the river, they give 6387
us our price.

Q. Do you require any statement from them? A. Absolutely.

Q. Showing the price which they have received for the coal? A. I told you the price that they give us is the price that we accept the order at the mines for all coal, with the exception of tidal coal.

Q. If they are obliged to sell at the price at the mines plus the cost of transportation, what is the difference between the arrangement as to the sales at line points 6388
and the sale at tidewater? A. The rates are different. That is, the Railroad Company's rates for hauling that coal are different at various points. Then they transfer some of that coal, for instance, we ship a great deal of coal to Philadelphia, that will go over the Reading Railroad, or over the Pennsylvania Railroad.

Q. Suppose the purchaser fails to take the coal, and suppose it is lost on a bad debt, who bears that? A. The Lehigh Valley Coal Company. We have never lost

6389 a penny on any sale of our coal since I have been in the business. In other words, I don't know what their experience has been, and I don't care to know.

Q. Has there been any assignment from the Lehigh Valley Coal Company to the Lehigh Valley Coal Sales Company, so far as you know, of the contract existing between you and the latter? A. I have never been a party, and our company that I am president of, has never been a party to any official assignment.

Q. Do you look to the Coal Company or the Coal Sales
6390 Company for performance? A. Just as long as anybody the Lehigh Coal Company names, performs the conditions of that contract we accept it, but we have never released the Lehigh Valley Coal Company from their responsibility.

Q. Then if the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company gives you an order for coal and they fail to collect the price from the purchaser then you expect the Lehigh Valley Coal Company—you hold them responsible for the amount of the price? A. No. Under our contract they have to pay us
6391 a check on the 20th of the month for all the business of the previous month. That is exactly how it is carried out. I don't know whether they ever get the money back or not.

Q. Then how do you follow whether they receive more or less for the coal than your price? A. That is not a hard job. We go to all our customers—I don't say all of them, but we go to the larger ones. In other words, we put a price on and I don't think they can get an order if they put any more price on it.

6392 Q. Then where does the commission come in; is the commission to be charged to the price you named? A. Then the commission is deducted from the mine price.

Q. Do you realize more from sales at the mines or from sales at tidewater? A. They are all figured back to a mine price.

Q. Yes, but do you get more finally? A. It depends upon the season of the year. Sometimes in certain sizes we get more from tidal prices than we do from what we call an all rail order.

Q. But at other seasons you get more from the sales 6393
at the mines? A. At times. You see we get the order in every case under our contract, and we have certain information upon which we accept or reject it. We notify them that they are to sell coal for a certain price at the mine, and when they send an order at that price we accept, mining it from month to month or at any time we see fit.

Q. Now, the written contract, paragraph three, provides that the party of the second part, that the Lehigh Valley Coal Company will place on every order sent to 6394
the party of the first part for direct shipment in cars from mines to consignee the price upon each size of coal on such order. Do they do that? A. Yes.

Q. But you have previously indicated to them what price you will accept? A. Absolutely. For instance, there may be a condition of the market by which they would have to send us word, how much can we sell some of your coal to such and such a destination at such and such a price? We either say yes or no. We keep absolutely in touch with the market; that is our business; 6395
just as much so as if we were handling the coal and selling it ourselves.

Q. Wherein constitutes the peculiar merit of your coal? A. I don't want to take up all the time necessary for to go into details, do you?

Q. Not in detail, only generally? A. The best answer I can give you is those that use the coal answer that question.

Q. In the character of the coal itself or in the preparation of it? A. We claim it is in the character of the coal; we claim it is in the preparation also, and they 6396
accept our claim and pay us our price.

Q. The Lehigh Valley Coal Company in its answer in this case, says that coal from its mines in the vicinity of your mine is in no respect inferior to yours, is that true? A. Modesty prevents me from answering that question.

Q. Is your coal what is known as a hard coal? A. It is harder than our Highland.

Q. It is a white ash coal? A. Supposed to be.

6397 Q. Well, is it? A. I suppose it is. I don't know. My sight is so that I could not tell what the color is; I have no sight in one eye and but little in the other. In other words, the customer accepts the coal, or would not buy if he did not feel it to be what we claimed for it. We claim four tons of our coal will go further than a larger quantity of the other coal in absolute use.

Q. Do you keep a record of the average price received for your coal of various sizes? A. Oh, yes.

Q. Both at the mines and at tidewater? A. It is all
6398 figured out at the mine price. I might say right here, you know, we have now got a suit against the Lehigh Valley Railroad Company for excessive freight rates in anthracite coal as between our mines and tide.

Q. Does the Lehigh Valley Coal Company stand the loss due to degradation in transportation or at stocking points, of your coal? A. I imagine that the Lehigh Valley Railroad Company has to make good, either to collect it through the Sales Company or——

Q. At any rate, you do not bear the loss due to degradation? A. You bet we don't.

6399

By Mr. Wheaton:

Q. Mr. Markle, let me ask you a few questions. The G. B. Markle Company is the sole judge of where its coal shall be sold and to whom it shall be sold, isn't it? A. Absolutely.

Q. Since March 1st, 1912, the Lehigh Valley Coal Sales Company has acted as selling agent without any formal abrogation of your contract; they have actually acted as selling agent, haven't they? A. That is what
6400 they have done, and we wrote them a letter holding the Lehigh Valley Coal Company liable for the performance of the contract as carried out.

Q. And without abrogating this contract you still tacitly accept the Lehigh Valley Coal Sales Company as your sales agent? A. Yes.

Mr. Machen: Do you remember the date of that letter, March 1st, was it, 1912?

The Witness: I should say it was previous to that at which that took place.

Mr. Machen: Isn't that letter right here? 6401
The Witness: I would not like to say positively, because my memory may be wrong. It is around about that date that that change took place in the market.

Q. You bought out the Asa Packer interest, didn't you? A. I personally own that interest. At first Asa Packer and then Mr. Wilbur was the owner of it, and I bought it from Mr. Wilbur individually.

Q. In cases of tidal sales, you get the price at which 6402
the coal is sold, don't you? A. Absolutely.

Q. You know what those prices are? A. Yes, and we do know and are satisfied to know the price at which the customer wherever he is is paying for that coal less those freight rates.

Q. Now, what I want to emphasize is this: You take to-day or since the L. V. Coal Sales Company has been selling that coal, if they send you an order it is absolutely in your discretion to say whether you will sell that coal or fill that order or not, isn't it? A. Absolutely. 6403

Q. You often reject orders, don't you? A. We do.

Q. And reject them for any cause whatever that seems proper to you? A. Absolutely.

By Mr. Boles:

Q. Mr. Markle, would you say that the Lehigh Valley Railroad is the natural transportation outlet for your coal? A. There is no other road right there. I would like to add a little more to that. We to-day even put in our own siding at our breaker, so that we are absolutely 6404
in a position if we so desire to order the coal shipped elsewhere other than on the short distance over the Lehigh Valley system.

Q. In other words, if you wanted to get a connection with, we will say, the Jersey Central or Pennsylvania, you are in a position to do so? A. Only a short haul on their track unless they would put a line into us—the other road would put a line into our breakers. We own

6405 all the tracks from the later collieries; we put in all the tracks at our own expense.

Q. But up to the present time the Lehigh Valley has been the road that has been hauling the coal from the breakers? A. Yes, sir.

Q. And now, as I understand your answer to Judge Wheaton's question, you can direct your coal to be sold any place you choose? A. Yes.

Q. Now, is it or is it not a fact that you sell your coal, or what proportion you do sell, along the line of
6406 the Lehigh Valley because you prefer the customers at those points? A. We are satisfied with the prices we get.

Q. At those points? A. Yes.

Q. If you chose, however, you could route all the coal so that it would be sold at points off the Lehigh Valley, couldn't you? A. We could not otherwise, unless one of the other roads made a connection to our track at our collieries.

Q. I mean, suppose you direct the Lehigh Valley Rail-
6407 road to deliver to a connecting line some place, you would have that right under your contract, haven't you? A. I so consider.

Q. Take, for example, your Philadelphia coal. You direct whether it is to go by the Pennsylvania or the Reading to Philadelphia? A. Yes, if it is to our advantage to have it shipped either way.

Q. And if you wanted to you could sell all your coal in Philadelphia, couldn't you? A. Absolutely, if we had orders enough for it.

Q. In the same way if you had orders enough you
6408 could sell it all in Scranton, couldn't you? A. I don't know whether the Scranton fellows would think so or not.

Q. Is there anything in the existing arrangements, or the existing contracts, between your company and the Lehigh Valley Coal Company, or between your company and any other company that would prevent you from at the present time sending all your coal out via the Pennsylvania Railroad or the Jersey Central Railroad if you chose to, with a connection with those railroads?

Mr. Machen: I object to all those questions as to what might be done under the contract, because the contract itself being in evidence speaks for itself. 6409

Q. What is your answer, Mr. Markle? A. Well, my answer is if a railroad put a connection into us——

Q. Which railroad? A. Other than the Lehigh Valley, any road other than the Lehigh Valley, we interpret that contract and believe it gives us permission to ship over it.

Q. As to every pound of your coal? A. Every pound of our coal, yes. 6410

Q. What is the nearest distance between any of your breakers and the Jersey Central Railroad? A. I should imagine White Haven would be about the nearest point. I could not say how many miles it is.

Q. Two or three? A. Oh, it is more than that. It is six or seven—I might make a guess.

Q. What of a connection at Pond Creek Junction? A. Yes, that is so. There is a point at Pond Creek Junction. The Jersey Central runs into the Sandy Run, which is a property adjoining east of our Highland property. 6411

Q. And how near is that? A. That is only a little over a mile.

Q. And what is the nearest connection you could make with the Pennsylvania Railroad? A. The Pennsylvania Railroad as I understand has some kind of arrangement with the Lehigh Valley Railroad from Tomhicken across toward Schuylkill County.

Q. A trackage contract? A. I so understand. And they are a very short distance from us. We could make a connection with the road inside of a mile and a half or two miles. I would like to say right here if it wasn't to our advantage to allow the coal to go the way it does we would not allow it to go. 6412

Q. But, if you felt at any time, or if you felt tomorrow that it was not to your advantage to have the present arrangement continue you could make this connection within a mile or two with the Jersey Central or

6413 with the Pennsylvania and then route all your coal via those lines, couldn't you?

Mr. Machen: Objected to for the same reasons above.

A. Yes; the price being satisfactory.

Q. That is within your control, the price, isn't it? A. Absolutely.

Q. Do you ship any coal via the Wilkes-Barre and Hazleton Railroad? A. Only for their uses.

6414 Q. Do they get into your breakers? A. No.

Q. How near did they come? A. I imagine about a mile or a mile and a half over the Lehigh Valley system.

Q. And that would be a third outlet if you chose to have that connection made, wouldn't it? A. Yes.

Q. Mr. Markle, just in a general way, what was the extent of your production last year in gross tons? A. About one million three hundred thousand.

Q. Will it be about the same this year? A. Per month we are considerably above it.

6415 Re-Cross Examination by Mr. Machen:

Q. What is the Wilkes-Barre & Hazleton Railroad? A. It is a road that is built between Wilkes-Barre and Hazleton. It is a third rail electric system.

Q. Mr. Markle, I call your attention to the fifth paragraph of your contract with the Lehigh Valley Company which reads as follows: "It is further mutually understood and agreed that should the market at any time assume such a position that the product from the mines of the party of the first part cannot be sold at

6416 the prices fixed or established as aforesaid by the party of the first part, the party of the second part may demand that the party of the first part shall, and the party of the first part hereby agree that they will, curtail the output from said collieries in such a manner as may be rendered necessary by the condition of the market for coal from the aforesaid collieries, provided they shall not be asked to curtail except in proportion with mines of similiar coal shipping to the party of the second part; and provided further, that in case the party of the

first part is asked by the party of the second part to 6417
curtail their shipments to a greater extent than their proportion with miners shipping similar coal to the party of the second part, that then the said party of the first part shall be free to sell their coal in the general market." Were you aware of that provision in your contract? A. Most assuredly.

Q. You never had occasion to refuse to accept an order for coal from the Lehigh Valley Coal Company on the ground that they had received too high a price, have you? A. I have not heard of it. 6418

Q. Or their demanding too high a price; have you ever heard of that? A. They demand what we name.

Q. Under the contract, if the contract is performed, they are to name the price and you are to decide whether it is acceptable? A. We don't do it for the simple reason they get our price before they do anything. We notify them constantly of our prices, changing sometimes from month to month.

Q. And they always give orders at that price at the mines, plus the transportation charges? A. Absolutely.

A. In other words, that clause of the contract has 6419
never been used in any capacity whatever. I never thought it amounted to a hill of beans.

Mr. Wheaton: What clause do you mean?

The Witness: The clause with reference to the restriction proposition. I want to say in a depressed market we have to judge accurately of the price, naturally. We are supposed to be fairly acquainted with the market situation and we naturally name prices accordingly.

6420

Q. And your object is to sell your coal in the highest market, of course? A. Absolutely, certainly.

Q. And you found, as you say, what you found—could you give us any idea of the proportion of your coal sold at the various points? A. I could not.

Q. You could not even give an approximate idea? A. No, sir.

Q. As to the amount sold along the line of the Lehigh Valley? A. There is a great deal of coal sold along the

6421 Lehigh Valley Railroad, and those people pay a premium for it than any other coal that is shipped over the Lehigh Valley Railroad. There is no question about it in my mind and in the minds of the customers that our coal warrants the price that they are willing to pay for it.

Q. What routes are there from your mines to Philadelphia? A. Why, from Bethlehem over the Philadelphia & Reading system, and from Phillipsburg over the Belvidere Division of the Pennsylvania Railroad. The
6422 Bethlehem route is the old North Penn Railroad controlled by the Philadelphia & Reading.

Q. Which way do you send your coal, or which way is it shipped that goes to Philadelphia? A. Nearly all of our coal, except we ship some to a point on the Belvidere, and then it goes by boat to Philadelphia; part distance on the Belvidere—over the Belvidere Division of the Pennsylvania Railroad.

Q. You deliver to the Pennsylvania Railroad at Phillipsburg? A. Yes; that is the junction.

6423 By Mr. Wheaton:

Q. Did you ever restrict your output? A. Who?

Q. Markle & Company; did you ever restrict your output of coal? A. Did we ever restrict it?

Q. Yes. A. No.

Q. Did the Lehigh Valley Coal Company ever ask you to restrict it? A. No.

Q. If they had asked you you would not do it, would you? A. I doubt very much if we would.

Q. You have never had occasion to curtail your out-
6424 put because the market condition was such that you did not think it would stand it? A. We had to ship a great deal more to stock points, which is the tidal point here. The Perth Amboy tidal point, which our friend the Lehigh Valley Railroad has taken from us, and we hope they are going to pay us a dandy price for what they took.

Walter J. Fahy, called as a witness on behalf of the 6425
Lehigh Valley Coal Company, being first sworn, testified as follows:

Direct Examination by Mr. Wheaton:

Q. Mr. Fahy, what is your occupation? A. I am a writer.

Q. In the Government bill in this case certain allegations are made as to the value of the output of anthracite coal as compared to the value of the output of pig iron and bituminous coal and various other products. 6426
Have you made an examination of that subject? A. I have.

Q. And a tabulation? A. I examined some Government statistics on the matter.

Q. In the Government bill in this case the statement is made that in value the output of it—referring to anthracite coal—is surpassed only by pig iron and bituminous coal among all the mineral products of the United States, gold or silver, copper, lead, zinc, petroleum, natural gas, clay products, stone, all of which are 6427
subordinate to it. Can you tell me what is the annual value of the copper output, say in 1907? A. I have forgotten the relative values of the outputs. I looked it up at the time, but do not recall now.

Q. I thought you were to have a statement with you which you prepared at that time. See if you cannot find the statement which you furnished to Mr. Boles. Now, refer to that tabulation; is that the tabulation you made? A. It is.

Q. Now, referring to the year 1907, what was the annual value of the copper output as compared with the 6428
annual value of anthracite coal for the same year? A. Annual value of each?

Mr. Machen: Give the total value of each.

A. (Continuing.) The copper output was $173,799,300; the value of the anthracite coal for the same year was $163,584,056.

6429 Q. The difference being something over ten million dollars? A. Yes.

Q. What was the value in 1909 of the clay products as compared with the value of anthracite products for that year? A. In 1909 the value of clay products was $166,321,213. The value of anthracite for the same year was $149,181,586.

Q. Or a difference in value of clay products over anthracite of practically $17,000,000? A. That is right.

Q. What was the comparative value of clay products
6430 and anthracite coal for the year 1910? A. Clay products for 1910 was valued at $170,115,974; anthracite coal for the same year was valued at $160,275,302.

Q. Or an approximate difference of clay products over anthracite coal of about ten million dollars? A. Yes.

Q. What was the value of the copper output for the year 1912, as compared with the value of anthracite for the same year? A. The value of copper for 1912 was $205,189,338; anthracite coal for the same year was $177,622,626.

6431 Q. The value of the copper products exceeds the value of the anthracite products for that year of approximately $23,000,000? A. About that, yes.

Q. In the year 1912, what was the value of the output of bituminous coal in excess of the value of the output of anthracite coal for the same year? A. The value of bituminous coal in 1912 was $517,982,445.

Q. And the anthracite is what? A. Anthracite for the year 1912 was $177,622,626.

Q. The value of bituminous in that year exceeded in
6432 value the anthracite by approximately $340,000,000, didn't it? A. Approximately.

Cross-Examination by Mr. Machen:

Q. You found that in each of these years the other mineral products mentioned on page 11 of the petition, namely, gold and silver, lead, zinc, petroleum, natural gas and stone were all less in value than anthracite coal? A. Yes.

Q. Have you made any comparison between the value 6433
of the anthracite output for the entire period of six years from 1907 to 1912 inclusive, and the value of the output of copper and clay products? A. There is a government document on that subject, a copy of which I saw. I haven't got it before me now, and I don't know where it is, but there is such a document by the Geological Survey which makes out in detail the entire output of each mineral.

Q. The value of the copper output exceeded the value of the anthracite coal output in only two years out of 6434
six, isn't that so, being the years 1907 and 1912, isn't that so? A. 1907 and 1912 were the years in which it exceeded for the six year period.

Q. And in those two years it exceeded—what was the total amount of the excess approximately? A. 1907 it was ten million; 1912 about thirty-five million.

Q. Making a total of about forty-five million in excess in those two years? A. Yes.

Q. And in 1908 the value of the anthracite output exceeded the value of the copper output about thirty-four 6435
million, did it not; and in 1909 by approximately seven million; in 1910 by more than twenty million, and in 1911 by nearly more than forty million? A. That is correct, if the figures you read show it, because they are taken from the government documents.

Q. And in the same way the value of the coal and the clay products exceeded the value of the output of anthracite coal in only two years out of six, 1907 to 1912, inclusive? A. That statement shows it, if it is correct.

Q. Then taking the entire years of your period, the value of the anthracite output considerably exceeded 6436
the value of the output of clay products, did it not? A. In the aggregate.

6437 **Frederick M. Chase,** called as a witness on behalf of the Lehigh Valley Coal Company, being first sworn, testified as follows:

Direct Examination by Mr. Wheaton:

Q. Mr. Chase, you are the Vice-President and General Manager of the Lehigh Valley Coal Company? A. Yes.

Q. When did you first go into the employ of the Lehigh Valley Coal Company? A. In 1879.

6438 Q. And you have been with them continuously ever since? A. Ever since.

Q. Were you ever employed by any railroad company? A. Never by any railroad company. I have been in no other empoy.

Q. What positions have you occupied since the time you became connected with the Lehigh Valley Coal Company? A. I went to work in the mines. I was subsequently office boy; I was clerk, I was chief clerk; I was chief accountant; assistant to the General Manager; As-

6439 sistant General Manager; General Superintendent, and now Vice-President and General Manager.

Q. Who preceded you as Vice-President and General Manager of the Lehigh Valley Coal Company? A. Samuel D. Warriner, now President of the Lehigh Coal & Navigation Company.

Q. Can you tell when he became Vice-President and General Manager of the Lehigh Coal Company? A. He became General Manager in 1901—I cannot recall the year when he was made Vice-President and General Manager.

6440 Q. What time did he resign? A. In 1912; the first of July.

Q. Who preceded him as General Manager of the Lehigh Valley Coal Company? A. William A. Lathrop, formerly President of the Lehigh Coal & Navigation Company; prior to that president of the Webster Coal & Coke Company.

Q. Offices he held after he resigned as General Manager of the Lehigh Coal & Coke Company—did he, in 1901? A. After he resigned.

Q. Who preceded him as General Manager of the 6441
Lehigh Valley Coal Company? A. Frederick Mercur, who died in 1890.

Q. And he was the first general manager? A. Yes.

Q. So that you have been, with the Lehigh Valley Coal Company, in its employ, under several general managers? A. Yes.

Q. From the beginning down to the present time? A. Yes.

Q. Were any of your predecessors, beginning with Mr. Mercur, in the employ of the Railroad Company at 6442
any time—I mean when they were connected with the Lehigh Valley Coal Company? A. Not to my knowledge at any time were they connected with the Railroad Company. Both Mercur and Lathrop had held positions prior to their connection with the Coal Company with the Lehigh Valley Railroad Company.

Q. Upon the engineering corps? A. Yes.

Q. As young surveyors? Young men both at that time? A. They were both young men at the time and on the surveying corps. Mr. Lathrop's connection—there was a long period between the time Mr. Lathrop 6443
was connected with the Lehigh Valley Railroad Company and when he became connected with the Lehigh Valley Coal Company, some five or six years.

Q. Have you read the answer in behalf of the Lehigh Valley Coal Company in this pending suit? A. Yes.

Q. For the Coal Company? A. Yes.

Q. After an examination of the allegations of the petition in this case? A. Yes, sir.

Q. Are the facts set forth true and correct?

Mr. Machen: Objected to as leading and too 6444
general.

A. They are true and correct to the best of my knowledge and belief.

Q. Does the Lehigh Valley Coal Company ship any coal in interstate commerce? A. It does not.

Q. Since when has it ceased to ship any coal in interstate commerce? A. Since March 1st, 1912.

Q. To whom does it sell all of its coal except some small quantities for local consumption? A. It sells all

6445 of its coal with the exception of that sold to the Lehigh Valley Railroad Company for supply coal to the Lehigh Valley Coal Sales Company.

Q. And delivered where? A. At the breakers in all cases.

Q. Within the State of Pennsylvania? A. Within the State of Pennsylvania.

Q. And the title of the coal passes from the Lehigh Valley Coal Company to the Lehigh Valley Coal Sales Company at what point? A. At the several breakers

6446 where it is produced.

Q. Within what State. A. Within the State of Pennsylvania.

Q. What coal, does the Lehigh Valley Coal Company buy for the purpose of re-selling? A. It does not buy any for the purpose of re-selling.

Q. And since what time has it ceased buying any coal for the purpose of re-selling? A. Some time during May, 1913; I don't remember the exact day.

Q. Does the Lehigh Valley Coal Company, "take over," in the language of the Government, any coal from

6447 Coxe Bros. & Company, Inc.? A. If you mean by taking over that they purchase any coal, they do not.

Q. To whom for some time past has the coal of Coxe Bros. & Company, Inc., been delivered for sale? A. To the Lehigh Valley Coal Sales Company.

Q. At what point? A. At the breakers where it is prepared in the State of Pennsylvania.

Q. And at what point does the title pass to the Lehigh Valley Coal Sales Company?

Mr. Machen: Objected to because it is a ques-

6448 tion of law.

A. At that point, at the breakers, in the State of Pennsylvania.

Q. The Government in its petition alleges that the Lehigh Valley Coal Company is a party to a combination or a conspiracy to restrain or monopolize the production, transportation and sale of anthracite coal, and that it has been monopolizing or has been attempting to monopolize the production, transportation and sale in

interstate commerce of anthracite coal from the mines 6449
and lands located along the lines of the Lehigh Valley Railroad by acquiring control of such mines and lands, and by acquiring control of the output of independent producers, by exerting the power of Lehigh Valley Railroad as its carrier to give undue preferences, and advantages to the Coal Producing & Trading Company controlled by it and by discriminating against its competitors, and by other means. I want you to state now whether that allegation is true or false?

Mr. Machen: Objected to as leading, and be- 6450
cause it amounts to a question of law, calling for a matter of opinion.

A. I know of no such effort, nor have I ever known of any such effort on their part.

Q. In all your acquaintance with the affairs of the Lehigh Valley Coal Company I want you to state whether or not in acquiring coal properties, whether by purchase or by the acquisition of the stock of other coal companies, or by lease, it has ever done anything more 6451
so far as your observation and knowledge goes, than that which was required by the normal course of legitimate business?

Mr. Machen: Objected to as involving a question of law, and as calling for a matter of opinion.

A. Their object in acquiring land as set forth in your question has been in my judgment purely along the lines of good business practice, to enable them to continue their operations as a coal mining company. 6452

Q. Subservient to any other organization or as an independent company? A. Entirely independent.

Q. In the progress of the business of anthracite mining and the preparation of coal, coal is consumed as you go along, is it not? A. The mines are gradually exhausted.

Q. And there is absolutely no way of replacing them, is there? A. No, sir.

Q. Once gone it is gone forever? A. I think the character of the coal would indicate that.

6453 Q. Yes. Now, you are familiar with the concedely limited territory which is underlaid with anthracite coal, are you not? A. Yes, sir.

Q. And you are also familiar with the fact as the exhaustion of anthracite coal progresses the price of the remaining coal tracts and area very rapidly increases? A. That has been my experience.

Q. What would you say, therefore, would be likely to be the fate, not likely, but surely the fate—of the anthracite coal producing company which sat down upon
6454 a comparatively small area of coal and failed to have regard for its future needs and necessities as to the acquisition of additional coal; what would happen to that company when exhaustion of its territory took place? A. Well, it would be compelled to go out of business.

Q. What would be left of all of its mining improvements consisting of breakers and gangways and airways and shafts and slopes and the other things? A. They would be practically valueless.

Q. What would you say about the wisdom of an operating anthracite coal company which desired to
6455 continue in the business of mining and preparing anthracite coal awaiting that period of time when actual exhaustion takes place? A. I should say it would be a very unwise business practice.

Q. What ought it to do now; in the normal development of its business, what ought it to do in the way of acquiring additional coal property? A. If it proposed to continue in the business in which it was engaged it should acquire land as rapidly as it could be acquired in proportion to the exhaustion of their land already
6456 held and in proportion to the demand upon it for production.

Q. State whether or not that has been the policy of the Lehigh Valley Coal Company? A. That has been the policy of the Lehigh Valley Coal Company.

Q. And state whether or not its acquisitions have been along the lines of that policy, and without, so far as your knowledge and observation goes, any ulterior motive whatever? A. So far as my knowledge is concerned all the acquisitions of all the lands of which we have ac-

quired since I have been familiar with the acquisitions 6457
have been purely along the line of maintaining our operations under normal business conditions.

Q. And for that purpose alone? A. And for that purpose alone.

Q. Since the entry of the decree of the United States Court for the Eastern District of Pennsylvania with reference to the validity of the so-called sixty-five per cent. contracts, the date being concededly May 26th, 1913, has the Lehigh Valley Coal Company continued under any such contract? A. They have not. 6458

Q. What did you do personally as to notifying the people with whom at that time you had such contracts? A. I advised a number of them—I think all of them—of the fact that under that decree we could no longer carry out the terms of the sixty-five per cent. contract.

Q. Do you remember how many of them you had at that time—how many the Lehigh Valley Coal Company had at that time? A. I don't remember the exact number—five or six, I think.

Q. The G. B. Markle contract of 1889 was entered into under the general management of Mr. Lathrop, was 6459
it not? A. It was.

Q. And Mr. Lathrop died when? A. Mr. Lathrop died in 1912.

Q. Since March 1st, 1912, by sort of tacit assent—by actual tacit assent—the coal of the G. B. Markle Company has been delivered over to the Lehigh Valley Coal Sales Company, has it not? A. The transactions between the G. B. Markle Company has been with the Lehigh Valley Coal Sales Company as far as I know.

Q. And the Lehigh Valley Coal Company has taken 6460
none of the G. B. Markle coal? A. Not to my knowledge.

Q. And sold none of it? A. Not to my knowledge.

Q. You would know it? A. I think I would.

Q. But that coal has since that date been sold by the Lehigh Valley Coal Sales Company? A. It has been.

Q. You were present when Mr. Norris testified on Friday, were you not? A. Yes, sir.

Q. And heard all of his testimony? A. Yes, I think I heard it all.

6461 Q. What have you to say now as to the correctness of that testimony? A. There was nothing in the testimony that was incorrect so far as I heard it. I think it was generally correct.

Mr. Machen: I object to such a general question as that.

Mr. Wheaton: You don't want me to go over that again.

Mr. Machen: I certainly do if you want to ask him the same questions that you asked Mr. Norris. I certainly don't want to have any general assumption as to the correctness of Mr. Norris' testimony in the opinion of this witness.

6462

Q. Now, with reference to the averment of the answer that the mining and preparing and selling of anthracite coal is a business of more than ordinary financial hazard and risk, what have you to say with reference to that? A. I consider that it is a business of very much more than ordinary hazard and business risk.

6463 Q. Can you state now for the record in a general way some of the things which occurred to you which lead you to make this answer, that it is more than ordinary hazard? A. The risk of serious and sometimes total interruption from fires in sections, and in some cases throughout the entire underground workings. The risk of sudden flood overwhelming the mines; the risk of extensive squeezes; the risk of explosions from the fire; the risk of the veins to be continuously workable, although expected to be from the ordinary development; the risk of fires to the breakers, which have generally been of frame

6464 construction and because of the uses to which they are put are very inflammable, involving a serious loss; delay of operations. Those are some of the business hazards which occur to me, most of which we have experienced in one way or another.

Q. Is there the ever attendant cost of water pumping? A. The pumping is possibly a very important cost, very important cost; the volume of water to be pumped, the character of the water to be pumped after it is pumped; the disposition of it after it is pumped, the sudden in-

rush of water during severe storms, overwhelming the 6465
elaborate pumping systems that have been provided. All of those tend to have a very grave or form a very grave hazard in the operation of our mines.

Q. Mr. Chase, do you recall the lease of the Lehigh Valley Coal Company to the Babylon Coal Company, dated January 1st, 1890? A. Yes, I recall that.

Q. What has become of that lease? A. It has been returned; the property has been returned and is now in the hands of the Lehigh Valley Coal Company.

Q. Do you remember when it was surrendered? A. I 6466
think in 1905; sometime after their breaker burned.

Q. Do you remember the lease from the Lehigh Valley Coal Company to the Austin Coal Company, dated February 29th, 1891? A. I remember such a lease.

Q. What has become of that lease? A. That lease has been surrendered and the property has been returned to the Lehigh Valley Coal Company. It was our property, or most of it.

Q. You were the lessor? A. We were the lessor and owner of both that and the Babylon property.

Q. That is, you had the ownership in this land? A. 6467
Yes, we owned it, and a leasehold interest in the undivided portion of it.

Q. So that upon the return or surrender of those leases you simply got back your own land? A. Yes.

Q. Do you remember when the Austin Coal Company lease was surrendered, or given up by whatever process it was? A. Why, it was some four or five years ago; I cannot remember the exact date.

Mr. Gordon: Wasn't it 1911; the annual re- 6468
port says so.

The Witness: I should say about that time. I cannot remember exactly.

Q. Do you remember the lease from the Lehigh Valley Coal Company to E. N. Willard and A. B. Stevens, dated January 28th, 1889? A. I remember such a lease.

Q. What has become of that lease? A. That property is now in the hands of the Lehigh Valley Coal Company, a portion of it, we own it in fee and leased it to those

6469 people and they subsequently surrendered it; but the exact formality they went through I don't remember, but it had the effect of returning that property to us and it is now in our possession.

Q. About how many years ago was that lease surrendered that 1889 lease? A. I think that was seven or eight years ago. I do not recall that date exactly.

Q. There were two of those leases, had they both been surrendered up? A. Yes; one was the lease of other property than we owned and one was a lease of our own
6470 fee property. They were both turned over to us.

Q. Do you remember the lease from the Lehigh Valley Coal Company to Martin J. Healy, dated January 1st, 1910? A. Yes, sir.

Q. That lease is still in existence, is it not? A. Yes, sir.

Q. And covers about how much land or about how much coal? A. As I recall it covers about sixty-five acres—certain veins in about sixty-five acres.

Q. Is it a very considerable operation? A. No; a very small operation.

6471

Mr. Machen: Who operates it now, the Healy Coal Company.

The Witness: I think they call it the Miners Mills Coal Company.

Mr. Machen: Do you remember the name of the colliery?

The Witness: The Miners' Mills Colliery; it is known sometimes as that and sometimes as the Healy Colliery.

6472 Q. Now, these leases that I have mentioned, together with a lease from the Wyoming Valley Coal Company to Simpson & Watkins, dated November 1st, 1896, and a lease from the New York and Middle Coal Field Railroad and Coal Company and others to the Mid-Valley Coal Company, dated July 1st, 1899, and a lease from the Locust Mountain Coal & Iron Company to Louis A. Riley & Company, dated January 7th, 1889, what has become of that lease, is that in existence yet? A. No; Riley's lease was surrendered in 1896 and the property is now operated by the Lehigh Valley Coal Company.

Q. The lease from the Delano Land Company to the 6473
Buck Mountain Coal Company, dated November 1st, 1883, is that lease still in existence? A. That expired by limitation. The lands were owned originally by the Delano Land Company and subsequently by the Lehigh Valley Coal Company, and the lease expired, I think, in 1910. I cannot name all of these dates exactly.

Q. And the lease from the Delano Land Company to Lentz, Lilly & Company, dated January 9th, 1884, what became of that lease? A. That was surrendered to the Lehigh Valley Coal Company. 6474

Mr. Machen: That was property operated by Lentz & Company?

The Witness: Yes.

Q. When was that surrendered? A. 1910, I think, or 1909.

Q. All of these leases that you have spoken of, those which were surrendered for a period back, and those which are in existence, contained routing clauses. I want to ask you whether so far as your knowledge goes 6475
was there ever any attempt made to enforce any of those routing clauses? A. There never was so far as I know.

Q. As a matter of fact, is it not true, that in many instances the lessees under some or perhaps all those leases, shipped where they pleased without regard to the routing clause? A. Entirely so.

Q. And without objection on the part of the lessors at all? A. The lessors are only interested in the operations.

Q. I want to ask you whether so far as your knowledge goes was there ever any attempt made to enforce 6476
any of those routing clauses? A. There never was so far as I know.

Q. As a matter of fact, is it not true, that in many instances the lessee under some or perhaps all those leases, shipped where they pleased without regard to the routing clause? A. Entirely so.

Q. And without objection on the part of the lessors at all. A. The lessors are only interested in the opera-

6477 tions of the lands and the collection of the royalties, not with the routing of the coal.

Q. That old form of routing clause then was a dead letter? A. So far as I know there was never any attempt made to enforce that clause.

Q. And, of course, as to all of those leases that have expired by the lapse of time, or have been surrendered, it is now out of the matter altogether? A. Yes, of course.

Q. From 1902, from the time of the award of the Com-
6478 mission, down to the agreement between the miners and the operators in 1912, 65 per cent. of the average Tidewater price of prepared anthracite coal and the various smaller percentages on smaller sizes of coal, was made the basis for the payment of the miners' wages in the anthracite region, were they not? A. Yes. There was in the agreement of 1902, as a result of the Anthracite Strike Commission's award, the wages of the men were based on a sliding scale, dependent upon the price of coal at Tidewater.

Q. And just what was that scale? A. If you want it
6479 exactly, let me refer to the records and read that in.

Q. Yes, do that. A. That arrangement was for three years and is continued down to the agreement of May 20, 1912.

Q. So that on the first day of March, 1912, that method of arriving at the miners' wages was still in force. A. It was, up to the agreement of May 20, 1912.

Cross-Examination by Mr. Machen:

Q. Mr. Chase, what are the duties of the General
6480 Manager of the Lehigh Valley Coal Company? A. I have general charge of the operating of all their mines.

Q. You are not connected with the financial operations of the Company, are you? A. I am not responsible for the financial operations, no, sir; I am acquainted with them, more or less.

Q. How long have you been a member of the Board of Directors? A. Since 1912, July 5th.

Q. Prior to that time you were not a member of the board? A. I was not.

Q. And, of course, were not present at the Board meetings? A. I was not present at the Board meetings prior to that. 6481

Q. You are the practical man, are you, as General Manager? A. Yes.

Q. And you have charge of the actual operation of the Company, as distinguished from its direction? A. I have charge in a large measure of the direction and operation of the Lehigh Valley Coal Company.

Q. And the actual operation of the mines, the mining operations? A. Mining and other operations. 6482

Q. What operations other than—— A. The sale——

Q. Prior to 1912 the sale of the coal do you mean? A. I did not have charge of that, to see that the prices that were made were carried out; I still see to that feature of our business.

Q. As to the operations? A. As to the operations.

Q. The Lehigh Valley Coal Company still continues the operation of a number of collieries, in fact all of its collieries? A. Oh, yes.

Q. Do you make any distinction between the coal which is mined from the Coxe Collieries and the coal which is mined from the Lehigh Valley Collieries? A. Yes, a decided distinction. There is an independent, separate corporation known as Coxe Brothers & Company, Inc.; I am Vice-President and General Manager of that as well, but the operations are entirely distinct, except that I have control over both companies. 6483

Q. What steps do you take to keep the coal separate at the breakers which are used for the coal coming from the Coxe mines and some of the Lehigh Valley mines? A. We determine that by fixing the gross volume of coal dumped into that breaker each month—the gross volume in cubic feet—having a knowledge of the cubic feet or various capacities of mine cars that contribute coal to that operation. Having determined the gross volume of cubic feet that is dumped into that breaker and the gross tonnage or production that is shipped, we divide the one by the other and get the figure which applies to the number of cubic feet contributed by each company. 6484

Q. But the coal all goes in hotch-pot? A. Entirely so.

6485 We simply find, for example, that a million cubic feet has been the gross quantity of coal from all sources dumped into the breaker, and that 100,000 tons of prepared coal is a result of the preparation, and we divide the one by the other and determine how many tons or fractions of tons per cubic foot are produced by that operation, and then apply that figure to the number of cubic feet contributed, as I say, by each of the several operations.

Q. You use in some of the mines of the Lehigh Valley Coal Company improved methods of transporting coal from the interior of the mine to the mouth of the mine,
6486 or do you use mules? A. We use various forms of transportation, electric transportation, compressed air, gasolene locomotives, mules and rope haulage.

Q. You still use a considerable number of mules? A. We have about two thousand.

Q. Does the Lehigh Valley Coal Company raise mules themselves, or do they buy them? A. No, we buy them.

Q. Where do you buy them? A. In the open market, wherever there is an opportunity to buy them.

Q. Which markets? A. Markets at Wilkes-Barre,
6487 markets at Hazleton, markets at Pottsville, markets at Temple, markets at Scranton, markets at Pittston.

Q. Mr. Norris testified the other day, or read an article as to the difficulty that the miner has had in getting timbering for the mines at present; do you confirm that? A. Yes. The opportunity to get timber is gradually growing greater or more difficult, I should say.

Q. He went so far as to say, to quote from a Mr. Saward, he said that they had to get the timbers from Georgia? Do you go quite as far as that? A. Yes, we
6488 get timbering from Georgia.

Q. Where do you get your machinery for your mines; you don't manufacture it? A. We don't manufacture machinery, no.

Q. Do you buy it? A. We buy it.

Q. Where do you buy it? A. From various sources; Boston, New York, Buffalo, Chicago, Wilkes-Barre. There are general markets for everything we buy. We use somewhere between about $5,000,000 of material of various kinds.

Q. And you get that at whatever market you find the cheapest and most satisfactory? A. Whichever is the most satisfactory. 6489

Q. And then ship it to the various mines at which it is to be used? A. We do.

Q. What railroad routing do you use in shipping to these mines? A. Those that will be most convenient, and where it is thought—our mines are connected with the Lehigh Valley Railroad. We usually prefer that route because the sidings are connected and delivery can be made at the points which are most convenient to us. When it comes on other routes we name those that will probably produce the best price to us. 6490

Q. Shipped at the joint rate from the point of origin to the mine? A. Yes.

Q. Where else beside Georgia do you get your timber from? A. Oh, from various sources. Some small quantities of timber still exist in Pennsylvania; we get it from Maryland and North Carolina, the eastern shore of Delaware; we get timber from Buffalo.

Q. You have to have fodder, I suppose for the mules, too? A. Oh, yes, they have to be fed 365 days a year. 6491

Q. Where do you get the fodder for the mules? A. We raise some and we buy the larger quantity.

Q. You raise some right in the vicinity, I suppose? A. Yes; we own some surface land, and we raise hay and grain.

Mr. Wheaton:

Q. Do you raise alfalfa?

The Witness: Yes.

6492

Q. Where do you get it? A. We buy it in the open market.

Q. What market? A. In the West, New York, or wherever it happens to be.

Q. And you transport it in the same way that you transport machinery; that is to say, from the points of origin to the Lehigh Valley and from the Lehigh Valley Railroad to the collieries at which it is to be consumed? A. Where the most convenient junction is had

6493 with the Lehigh Valley Railroad in order to get—we prefer the Lehigh Valley to some other road if by routing through that point——

Q. That is not the point I am asking you. It must naturally go over the Lehigh Valley. A. It must go by lines connected with the Lehigh Valley.

Q. And is it shipped from the point of origin to the mines at a joint rate, or through rate? A. Yes, I presume so, whatever rates we have to pay; sometimes we buy delivered, and sometimes at point of shipment.

6494 Q. It was at one time the policy of the Lehigh Valley Coal Company, was it not, to lease its coal lands to operators, more or less independent operators, I suppose? A. I don't know whether that would be considered a policy. I know that leases were made at one time.

Q. To a considerable number of individual operators? A. Yes.

Q. Or operators disconnected from the railroad companies? A. Yes.

Q. And that policy has been discontinued, hasn't it?

6495 A. There have not been any recent cases of magnitude. We have leased some property——

Q. The Healey lease has been made in recent years—that is the lease of this Miners' Mills colliery; has any other lease been made recently? A. The only other lease I recall is one that we made, I think, to the Mineral Railroad & Mining Company, of some lands in Northumberland County.

Q. That was a land exchange, wasn't it? A. No, sir, a bona-fide lease.

6496 Q. I mean they leased some from you and you leased some from them? A. No, they didn't lease any to us.

Q. Now, Judge Wheaton has called your attention to a number of mining leases which have been offered in evidence marked Government Exhibit No. 102, and I would like to ask you some questions in detail about these. First take the lease from the Lehigh Valley Coal Company to the Babylon Coal Company, dated January 1st, 1890; what collieries did that cover? A. There were no collieries there when that lease was made.

Q. What colliery was constructed? A. The Babylon 6497
colliery.

Q. What railroad reaches that colliery? A. The Lehigh Valley Railroad.

Q. Did any other railroad reach the colliery? A. No other railroad reached that colliery. Of course, understand, when that lease was made there was no colliery. It was virgin land then, and it was developed by the lessees.

Q. And the lessees built the colliery and the Lehigh Valley Railroad constructed the siding to the colliery; 6498
I don't know whether you collected for the siding or not, do you? A. I don't know under what arrangements.

Q. The Lehigh Valley owned the tracks there? A. There were Lehigh Valley tracks there. I don't know how it was done; I only know that following the lease, a track appeared there and the breaker was built and other improvements.

Q. Now refer to the lease of the Lehigh Valley Coal Company to the Austin Coal Company dated February 23, 1891; what collieries did that cover? A. Austin col- 6499
lieries.

Q. What railroads or railroad runs to that colliery? A. Lehigh Valley Railroad.

Q. Any other railroad? A. I think there was another railroad there, but I don't think it reached to the colliery.

Q. Next we have two leases from the Lehigh Valley Coal Company to E. N. Willard & A. B. Stevens, both dated January 28th, 1889; what collieries did they cover? A. That was the Stevens collieries. 6500

Q. What railroad reached that colliery? A. Well, that was, as I recall—there was no colliery there; that was a similar situation. The collieries grew up and a railroad track was put in there, but it was the Lehigh Valley Railroad made the connection.

Q. No other railroad company made any connection with the colliery? A. I think not.

Q. I next call your attention to the lease from the Lehigh Valley Coal Company to William Connell, dated

6501 August 18, 1889; what collieries did that cover? A. The William A. Colliery, and also the Florence Colliery, some time abandoned.

Q. That lease is still in existence, isn't it? A. No, sir, that property was turned back by the Connell Coal Company, and is now operated by the Lehigh Valley Coal Company.

Q. Is that colliery still in operation? A. It is.

Q. About how much does it produce a year, do you know? A. It produces about 1,000 to 1,200 tons per day.

6502 I can tell you exactly what it produced last year.

Q. Let us have it? A. The William A. total prepared—for the year ending June 30, 1914, that is our fiscal year—

Q. You haven't it for June 1913? A. No I haven't it with me. That can be produced if you want it. The William A operation as we know it, includes the coal that is mined, the William A proper, the Babylon tracts, and the Cameron lead, or Nunber 10, we class that all as William A, practically. The other distinction we make

6503 is the coal brought there in railroad cars from the Stevens, and that we class as Stevens tonnage.

By Mr. Wheaton:

Q. What about the Austin coal?

The Witness: We cannot include that as part of the William A operation. We bring that there, however, in railroad cars.

Q. Can you tell us what was the production of the

6504 William A Colliery proper, for the year ending June 30, 1914? A. 226,858 tons.

Q. And what was the total production of the William A operation? A. If we add to that the production of Stevens, which was 85,834 tons, the total then of those two would be the amount of tonnage shipped from the William A breaker.

Q. What railroad reaches that colliery? This William A colliery? A. The Lehigh Valley Railroad.

Q. Does any other railroad? A. No.

Q. No other railroad has ever reached that colliery? 6505
A. No other railroad has ever reached that colliery.

Q. I next call your attention to the lease of the Lehigh Valley Coal Company to Martin H. Healey, dated January 1st, 1910. I understand you to say that that lease covers the Miners' Mills colliery? A. These lands are embraced in an operation known as the Miners' Mills. He has other lands besides what he leases from us.

Q. Does any other railroad reach that colliery? A. I don't know whether he has physical connection with any other road or not. There are two other roads very near, 6506
and I have indistinct recollection that he has made a connection with one of the other roads.

Q. I don't want you to guess about it. A. It is a subject that has not interested me particularly, but I have heard offhand that he was making some sort of connection.

Q. But has not done so yet? A. Perhaps not. The Wilkes Barre Connecting Railroad has been doing some building operations in that vicinity lately.

Q. What is the Wilkes Barre Connecting Railway, the Wilkes Barre & Hazelton? A. No, I only know it by 6507
that. I have no right to say this except what I read in the newspapers, but I understand that it is a road that is being built by the Delaware & Hudson Company.

Q. Is that the W-B & E.? A. No.

Q. What is the W-B & E.? A. That is the Wilkes Barre & Eastern. I think that road is now controlled by the New York, Susquehanna & Western Railroad.

Q. The railroad company's exhibit No. 54 states that the Central Railroad of New Jersey is within two hundred feet of this colliery, and the Delaware & Hudson 6508
and W. B. & E. are each within three thousand feet? A. Yes, but that is as of 1913, isn't it, that statement?

Mr. Boles: That is of today.

The Witness: Well, the Wilkes Barre Connecting Railroad Company is closer than that, I am sure, because it crosses the property.

Q. The Wilkes Barre Connecting Railroad, you say is controlled by the Delaware & Hudson? A. I only say

6509 that from hearsay. I cannot tell you. It is not operated by the Lehigh Valley Coal Company, that is all I know.

Q. I wanted to know whether that is what is included as the Delaware & Hudson, in the D. & H. on Exhibit No. 54. A. No, the D. &. H. between Wilkes Barre & Scranton is above that distance from it, and I think that is what you refer to.

Q. And the Wilkes Barre Conecting Railroad is much closer than that? A. Is closer to the property than that.

Mr. Boles: When was that built in there.

6510 The Witness: It is not finished as yet; it now is under construction.

Mr. Boles: Well, then, that is not a railroad.

Q. I mean to call your attention to the lease from the Wyoming Valley Coal Company to Simpson & Watkins, dated November 1st, 1893; that lease, I think, covers the Harry E. colliery. A. Harry E. and Forty Fort colliery, I believe.

Q. There is another lease of the Forty Fort Com-

6511 pany? A. After the Forty Fort Coal Company was organized they acquired some little further lands, but I believe,——

Mr. Wheaton: They are both in that lease.

Q. This lease from the Wyoming Valley Coal Company to Simpson & Watkins, dated November 1st, 1893, covers both the Forty Fort and the Harry E. collieries? A. That is my recollection, yes, sir.

Q. What railroad reaches the Harry E. colliery? A.

6512 The Lehigh Valley Railroad reaches it. I don't know whether the Delaware, Lackawanna & Western have a branch in there or not.

Q. What railroad or railroads reach the Forty Fort Colliery? A. I know that the Lehigh Valley Railroad have a branch in there.

Q. No other railroad has? A. I don't think so, although I would not answer positively as to that.

Q. That lease from the Wyoming Valley Coal Company to Simpson & Watkins is still in force, is it not?

A. Yes; it is in the name of the Forty Fort Coal Com- 6513
pany.

Q. The leasehold interest has been assigned? A. Yes.

Q. I next call your attention to the lease of the New York & Middle Coal Field Railroad & Coal Company, and the Mid Valley Coal Company, dated July 1st, 1889. That lease, I believe, is still in effect? A. Yes.

Q. What colliery does that cover? A. Mid Valley colliery.

Q. What railroad or railroads reach that colliery? A. Lehigh Valley Railroad. 6514

Q. And no other railroad? A. No other.

Q. I next call your attention to the lease from the Locust Mountain Coal & Iron Company to Lewis A. Riley & Company, January 7, 1889, which extended the term of the previous lease which was to expire on Decmeber 1st, 1894; what collieries did that lease cover? A. Originally there were two breakers on that property, the Centralia and Logan; only one now exists.

Q. Two breakers? A. There were two breakers, yes.

Q. What railroad or railroads reach those breakers? A. Lehigh Valley Railroad. 6515

Q. No other railroad? A. No other.

Q. I next call your attention to a lease from the Delano Land Company to Buck Mountain Coal Company, dated November 1, 1883; what colliery did that lease cover? A. When the lease was surrendered it covered two breakers, the Buck Mountain and the Vulcan.

Q. What railroad or railroads reached these breakers? A. Lehigh Valley Railroad.

Q. Did any other railroad or railroads ever reach it? A. No. 6516

Q. I next call you attention to a lease from the Delano Land Company to Lentz, Lilley & Company, dated January 1st, 1884; which colliery or collieries did that lease cover? A. There were two collieries on that lease or property at one time.

Q. What were their names? A. Park No. 1 and Park No. 2.

Q. What railroad or railroads reached these collieries? A. Lehigh Valley Railroad. Well, of course, that was a

6517 colliery that grew up after the lease was made, but that is the connection that it now has, and as far as I know it has never had any other.

Q. That is the Lehigh Valley Railroad? A. That is the Lehigh Valley Railroad.

Q. Your attention has been called to the G. B. Markle contract; is that contract being carried out? A. I could not tell you that; I am not familiar with the transaction at present.

Q. It was being carried out up to March 1st, 1912, was
6518 it? A. The Lehigh Valley Coal Company had disposed of the G. B. Markle Company coal evidently to the satisfaction of the Markle Company; so far as I know it was being carried out.

Q. Then the enforcement of that contract does not fall within your jurisdiction? A. No, sir.

Q. Now, I understood you to say that you were connected only with the Coal Company, and never with the railroad company? A. Never with the Lehigh Valley Railroad Company.

Q. And you have no knowledge of the objects and pur-
6519 poses of the Lehigh Valley Railroad Company? A. No, sir, except as a transportation company serving us.

Q. When you speak of objects you speak of your objects and do not undertake to speak for the Railroad Company? A. I do not undertake to speak for the Lehigh Valley Railroad Company in any respect.

Q. Does the Lehigh Valley Coal Company deal in bituminous coal at all, I mean to say, does it mine bituminous coal at all? A. It does. We have a mining operation in Snow Shoe, Center County, Pennsylvania.

6520 Q. On the line of the Pennsylvania and removed from the Lehigh Valley Railroad, isn't that so? A. Yes.

Q. What do you do with the coal mined from these lands? A. It is principally sold to the Lehigh Valley Railroad Company for supply coal.

Q. What is done with the balance? A. We sell some small amount locally, that is very inconsiderable; the bulk of it goes to the Lehigh Valley Railroad Company.

Q. What price does the Lehigh Valley Railroad Company pay for it? A. My impression is that they pay $1.05, but I cannot tell you positively—at the mine.

Q. $1.05 per ton for the run of mine, I suppose? A. 6521
The run of the mine, yes, sir.

Q. Has that price varied, or does it remain the same year after year? A. It has varied. It has been increased; I don't think it has ever been diminished.

Q. When was the last increase? A. It was the time of the last increase in wage to the bituminous mine workers, but I cannot tell you the exact date; a couple of years ago.

Q. Do you remember what the price was prior to that? A. I speak entirely from memory, and my memory is 6522
not really good. I think it was a dollar; I think it was five cents a ton advance, perhaps a fraction less than that.

Q. Do you know about how many tons are mined, or rather are sold from the Snow Shoe mines to the Lehigh Valley Railroad Company in the course of a year? A. I should say somewheres in the neighborhood of 250,000 tons.

Q. Does the Lehigh Valley Coal Company sell any anthracite coal to the Lehigh Valley Railroad Company? A. The Lehigh Valley Coal Company does sell 6523
anthracite coal to the Lehigh Valley Railroad Company.

Q. How much and at what price—you need not give exact figures—it is supply coal, isn't it? A. It is supply coal; I don't know whether it is all the supply coal or not. They do buy supply coal of us, but I cannot tell whether they buy from others or not.

Q. What is the price at which they buy from you? A. I think those prices vary some from month to month; I cannot give you the prices offhand.

Q. Are they fixed by—— A. They are fixed by agree- 6524
ment between the railroad company and ourselves.

Q. Who fixes them on behalf of the coal company? A. They generally write to me offering us an order at a certain price, which I accept or decline, if I choose to decline.

Q. Who writes on behalf of the railroad company? A. Their purchasing agent, Mr. Blendinger.

Q. Where is this coal delivered to the railroad company? A. At the mines; at the several breakers where we fill the orders.

6525 Q. You can ascertain the price for us can't you? A. Oh, yes.

Q. You say it varies from month to month? A. I don't think it varies from month to month, but it varies from time to time. I don't think so often as that. Mr. Tompkins, our Auditor, can give you that.

Q. Is it fixed by a proportion of the Tidewater price? A. No, it is a flat rate at the mines.

By Mr. Wheaton:

6526 Q. I want to ask you whether the output of the Lehigh Valley Coal Company from year to year has steadily increased in quantity of anthracite coal? A. Yes, it has.

Q. How about the output of Coxe Brothers & Company, Incorporated, since 1905, has that also steadily increased duly in quantity? A. Taking the output from 1905 up to the present time it has increased. There was perhaps in that time a year that it did not increase over the previous year but dating back from that time to now there has been a noticeable increase.

6527 Q. It is up to you to get out all the anthracite coal you can? A. It is; that is my work up there.

Q. And you do? A. I do; we get out every pound of coal we can.

Q. You get out the largest possible quantity of coal you can? A. Yes, sir.

Q. Every year? A. Every year.

Q. Do you remember the Austin Coal Company, if it did not have a little tract of land of its own up in that neck of woods? A. It had a tract of land it leased.

6528 Q. Before it made the lease with the Lehigh Valley Coal Company? A. It leased a tract of land up there before it leased one from us.

Q. Now, wasn't the extension up there of the Lehigh Valley Railroad Company made before the lease was made to the Austin? A. I couldn't say that.

Q. You don't remember that? A. I don't remember that.

By Mr. Machen: 6529

Q. Were these lands adjoining the lands demised in the lease from the Lehigh Valley Coal Company to the Austin Coal Company, which you have just referred to, what were known as the Hunter and Turner tracts? A. Yes.

Q. And those Hunter & Turner tracts were leased by the Lehigh Valley Coal Company? A. They contributed to this operation which was leased by the Lehigh Valley Coal Company.

6530

By Mr. Wheaton:

Q. They petered out, didn't they? A. Yes.

Q. They didn't find any coal under it? A. Yes, they found some under it, but they did not last very long.

Recess taken until 2 o'clock P. M.

AFTER RECESS.

2 P. M. 6531

W. J. Wilgus, recalled for cross-examination, testified as follows:

Cross-Examination by Mr. Machen:

Q. Mr. Wilgus, referring to the railroad company's Exhibit No. 35, which is your estimate of the cost of reproduction of the Lehigh Valley Railroad, I notice that one large item is for right of way, and station ground, $57,428,956.00. Now, I understood you to say that in making up that estimate, you relied upon certain 6532 gentlemen who had assisted you and with whom you consulted, is that correct? A. To a large extent, although on the more important property, I went into it personally in order to have a check on the views of my assistants.

Q. But in every case you were in touch with what was being done? A. Yes.

Q. In the same way we find another item of $14,145,662 for real estate, and that was likewise valued in the

6533 same way, was it? A. In the same way as in the case of the right of way and station grounds.

Q. Now, about how many stations are there on the Lehigh Valley Railroad, do you know? Several hundred, aren't there? A. I should have to give almost a guess, but I should say probably several hundred.

Q. And in valuing a station and station grounds for cost of reproduction, what was done, taking as an example, I don't mean a station at a great terminal point like Buffalo, but the ordinary stations along the line?
6534 A. The station and the station grounds, were, of course, considered separately.

Q. That is to say, you made a separate estimate for the improvements and a separate estimate for the value of the land? A. Yes, and through different agencies, the grounds and buildings being estimated by men skilled in the art of appraising real estate and structures.

Q. As far as the building itself is concerned, the estimate included the cost of reproducing each separate building new? A. New, and separately. Also an esti-
6535 mate was made of such depreciation as might exist.

Q. I understood you to say that you made no deduction for depreciation, however? A. Not from the cost of reproduction new, but a separate column is shown exhibiting the depreciation.

Q. Then the depreciation is shown in this final column of "Net Depreciation," is it? A. Yes.

Q. Did you in the same way include in the column of depreciation the loss in value due to cases where the railroad company had bought property at a higher price
6536 than could now be figured, or real estate a higher price than could now be realized? A. You are referring now to the question of land, not the building itself?

Q. Now referring to the question of land. A. In every case the value of that land was based upon its present-day estimate of cost of reproduction, regardless of what the company may have paid for it.

Q. And that is not included, therefore, in the depreciation? A. No.

Q. Depreciation refers only to the building? A. Physical depreciation.

Q. And therefore only to the buildings, or, as the real 6537
estate men say, the improvements? A. In the illustrations that you give, yes.

Q. Well, now, who made the examination of the station buildings? A. Those were made, in the majority of instances, by the district engineer in charge of each of the six districts.

Q. How much time did he devote to the work of valuation, in the work? A. The work was done first in the year 1911-12, and covered a period of about 6 to 8 months, and a similar period was used two years after- 6538
wards, so that each building was really inspected twice. Now, what time was given to each specific structure during that period, I am unable to say.

Q. Of course these men during that time were not devoting themselves exclusively to this, were they? A. During the period mentioned, they were.

Q. They gave up their ordinary routine work in connection with the railroad? A. They were not connected with the railroad at all.

Q. I thought you said they were division engineers. A. District engineers, that was their title. 6539

Mr. Boles: That was the title you gave them?

The Witness: That was my title for the purposes of valuation, in dividing up the road.

Q. I misunderstood you. I thought they were division engineers of the railroad. A. No railroad employes were utilized except in giving information from the records.

Q. But when it came to the valuation of the right of way and the land for the station grounds, and the other 6540
real estate, you relied upon other sources of information? A. Other than those who valued the buildings, yes.

Q. Who were those gentlemen? A. The man at the head of that department of the work was Mr. J. Frank Aldrich, who was in turn assisted by a large office force for the calculation of areas and the listing of results and the coloring of blue prints, and the investigation of the deeds; and on the ground he was assisted by sev-

6541 eral men who acted as his lieutenants in the personal examination of the property, and in the interviewing of local real estate authorities at different places along the line.

Q. Do you know how much time they devoted to it at each station? A. Not as to each station, because one place where there would be a number of parcels or where the information as to the value of the neighboring land might be obscure possibly a day or more might be devoted, whereas in cases of simplicity, where one or a
6542 few, or a very small number of parcels were involved, and the ascertainment of neighboring values was simple, it might only require a few hours, so that it would be impossible to state how much time was devoted, speaking generally, to any given parcel. In some instances, as, for instance, Jersey City, months were spent. I devoted a considerable portion of my own time to the case of terminals, including Jersey City, Perth Amboy and at the Buffalo end.

Q. How did you ascertain the extent of the railroad's title? A. No search was made in the sense of abstract-
6543 ing the titles. The deeds were taken and the maps produced by the company, the official maps, showing the outlines of the property to which they laid claim, and in which they were in possession, but no attempt was made to search titles.

Q. I don't mean that, but how did you ascertain where the property was not enclosed, for instance, how did you ascertain what the extent of the railroad's boundaries were? A. First we asked of the company blue prints of the right of way records, upon which was indi-
6544 cated the extent of what was claimed by the company; these we checked with deeds, and we were interested in not only ascertaining the cost of reproduction new, but also, if possible, to arrive at the original cost, and in that pursuit the maps were very largely checked from the deeds, but we primarily depended upon the right of way maps of the company.

Q. You said that in valuing the right of way and real estate, and the lands for the stations, you first took a basic value of land? A. Yes, sir.

Q. And you said that basic value was determined from 6545
the market value of other real estate in the vicinity. A. The market or normal value of property in the vicinity.

Q. What do you mean by "normal value?" A. In many instances it was not possible to obtain market value from appraisers. Many regions of the road were located where no transfers had taken place for a long period, and in such cases the normal value was obtained through interviews with real estate men in each particular town who were familiar with what might be termed "normal values."

6546

Q. Well, were these real estate men employed by you or by the railroad company? That is to say, did they receive a compensation for their services, or were they simply consulted as you would consult any witness? A. As a rule they were not paid. I should mention that we not only depended upon real estate men, but also upon banks loaning money on real estate.

Q. You simply asked these men for their opinion? A. Yes.

Q. Now, having ascertained, or having selected a basic 6547
value for the real estate in the vicinity, I understood you to say that you then added something for what you called continuity of plottage, and similar elements going to make up the completed railroad? A. Yes, such increments provided as you have stated, for plottage and continuity, which carry with them the well known expenses incidental to the acquisition of right of way for a railroad because of the damages to the remainder of the property, and the psychology that always accompanies the sale by a private owner to a corporation, and the expenses of condemnation and fees, right of way agent 6548
salaries and the various elements that, under the classification of the Interstate Commerce Commission, are chargeable to the two items of right of way and real estate.

Q. Well, now, how much did you add for elements of this character? What rule did you establish, what standard? A. That rule or standard was first dependant upon the experience of Mr. Aldrich in the actual acquisition of property in various parts of the East, checked by my own experience in a similar direction.

6549 Q. Well, would you add a certain proportion, or would you add something after having ascertained first the basic value of real estate in the vicinity, or how would you proceed? A. The procedure varied a great deal with the location of the property, as to being located in a city, or in a village, or in the open country, and whether or not it is located in the bottom land of a narrow stream, or where the right of way might occupy a considerable proportion of the more valuable part of a farm, and all elements of that kind had their effect in
6550 determining how much should be added to the normal price of adjoining land.

Q. Well, do you mean to say that you did not invariably add the same percentage to the basic value in order to ascertain the total value of the right of way or real estate? A. We did not.

Q. You used a different multiple, so to speak, in the cities—— A. (Interrupting.) Yes, from that used in the villages and from that used in the country, and in the country it varied, depending upon the topography or other surrounding conditions. For instance, in a flat
6551 country, as in the neighborhood of Buffalo, experience has shown in the case of Mr. Aldrich and my own, that a factor of five should be used in order to cause the adopted price of reproduction to cover that which we believed it would cost the railroad to buy that land to-day.

Q. What do you mean by a factor of five? A. For instance, if the neighboring land in farm parcels, large parcels, was normally worth $100.00 an acre, we would estimate that to reproduce that right of way to-day
6552 would cost $500 an acre.

Q. That is to reproduce a right of way, you mean to reproduce or to buy the continuous strip of land for right of way? A. Yes.

Q. Not to construct a railroad? A. No, I mean the land only.

Q. Because you have estimated separately for the construction of the railroad? A. Oh, yes.

Q. Well, how much in other places did you add? A. In large cities in many cases nothing was added where

the parcel was of large size, and the severance damage would be considered to be a minimum. 6553

Q. You mean where you were estimating the value of a, we will say, large terminal, large terminal yards, for example? A. Yes.

Q. Is that what you mean by a large tract? A. I mean in the case of a large terminal, in which there might be but one parcel, so that there was not the necessity of buying from a large number of individuals, some of whom might hold up a possible purchaser, but in the cities as a rule, in the cost of right of way, 50% was found to be what we believe to be a fair factor. 6554

Q. What was the highest factor that you used in any case? A. I don't believe, that, except possibly in very rare instances the factor in the country exceeded 5, and in the cities, very rarely exceeded 50%.

Mr. Boles: That is one-half?

The Witness: Yes, that is one-half.

Q. Well, there were some cases, however, where it ran up higher than 5, weren't there? A. I don't carry in my mind, although there may have been some that ran somewhat higher. If you wish, I can look up my records. 6555

Q. Yes, if you have them right there, and can do it easily. A. I haven't with me the details showing the increment used for each parcel, but I can if you wish, give the average increment used for different parts of the road.

Q. What I was asking you for was the highest? A. The highest in any one single case?

Q. Yes. A. I haven't the data of that here.

Q. Well, have you the highest for any portion of the road? A. Yes, between Jersey City and Buffalo, the average—— 6556

Q. (Interrupting) I was not asking for the average, I wanted the highest. A. The highest for any one seciton is between Wilkes-Barre and Ransom, and that was 7.8%

Q. You don't mean 7.8 per cent., do you? A. A factor of 7.8.

6557 Q. You mean you multiplied the basic value by 7.8 to arrive at the reproduction value? A. Yes. The others ran from——

Q. (Interrupting) In estimating the value. A. That is on the main line that I have given you. On the branches they run differently.

Q. That is the highest on the main line? A. Yes, between Jersey City and Buffalo.

Mr. Boles: No branch could be higher, could it?

6558 The Witness: I will look at the branches. On the sub-main lines, the highest is a factor of 6, on the M. & H. division, and 5.5 on the Lehigh & Lake Erie branch, where, by the way, we were able to check our estimates very closely by the original costs, which were paid only a few years ago.

Mr. Boles: How did they check?

The Witness: They checked very closely, except that our estimates were under rather than over.

6559 Q. In arriving at the value of contiguous real estate in order to obtain the basic value which you were to multiply by these various factors, how did you deal with the cases where the sales of contiguous real estate were sales of improved property? How much did you allow for the improvements? For instance, suppose you found that a house and lot adjoining had sold for $10,000, how would you know how much of the $10,000 was due to the house, and how much to the land? A. The improvements were never considered, or in other words, they

6560 were excluded in getting at the bare ground values.

Q. Of course, you would want to do that, but how much would you deduct? A. Well, in certain instances the authorities consulted would give their views as to the normal value or market value of the property of the neighboring land without improvements. In other cases where the records were necessary in order to substantiate Mr. Aldrich's views, the improvements might be estimated and deducted from the total consideration.

Q. Those local men are the real estate men you have spoken of? A. Local real estate men and bankers engaged in loaning money on real estate. 6561

Q. In your exhibit No. 35 I notice that $5,649,100.00 covers floating equipment, and that includes, I suppose, the Bee Line barges, and the boats of the Lehigh Valley Transportation Company, doesn't it? A. Yes.

Q. Do you know what proportion of coal carried by the Bee Line barges is coal of the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company? A. I don't know the proportions. 6562

Q. Neither do you know, I suppose, the proportion of freight transported westward by the Lehigh Valley Transportation Company on the great Lakes consists of coal of the Lehigh Valley Coal Company, or the Lehigh Valley Coal Sales Company?

Mr. Boles: The accurate figures of that are already in the record.

The Witness: I am not posted on the proportion of traffic. I did not understand that the floating equipment of the Lehigh Valley Transportation Company west of Buffalo transports anthracite coal. Those consist of steamers engaged in merchandise and package freight traffic. 6563

Re-Direct Examination by Mr. Boles:

Q. The hundred men that you spoke of as being employed in this valuation were men totally outside of the service of the railroad company? A. Yes.

Mr. Machen: Did that include these local real estate men? 6564

The Witness: No.

Q. Then, in addition to that, you made these consultations with local real estate men? A. Yes, who were uncompensated. My estimate of one hundred men applied only to those men who were in my employ and compensated.

Q. Is Mr. Aldrich in the real estate business? A. He is.

6565 Q. In New York? A. He is.

Q. Is it customary for one real estate man to express his opinion to another, in a professional way, without compensation? A. It is.

Q. So far as you could, you always consulted bankers as to local values? A. Yes.

Q. Wherever there was a bank that lent money on real estate you consulted them? A. Yes, that is, my assistants did.

6566 Re-Cross Examination by Mr. Machen:

Q. That included the entire force? A. Yes.

Q. Clerks and stenographers, and so forth? A. Yes. That you will remember, is an approximate number, as men came and went, and somewhat fluctuated in number.

Q. That is the total number? A. Yes.

6567 **John M. Humphrey**, a witness called in behalf of the Lehigh Valley Coal Company, having been first duly sworn, testified as follows:

Direct Examination by Mr. Wheaton:

Q. You are the chief mining engineer of the Lehigh Valley Coal Company? A. Yes, sir.

Q. And how long have you had the position of chief mining engineer? A. Two years.

Q. Before that were you in the employ of the Lehigh Valley Coal Company? A. Yes, sir.

6568 Q. In what capacity? A. Division Superintendent.

Q. At what point? A. In the Mahanoy and Shamokin Division, comprising the collieries from Shenandoah to West of Treverton.

Q. And before you were division superintendent of the Lehigh Valley Coal Company what position did you occupy? A. Chief mining engineer.

Q. How long had you been chief mining engineer prior to that time? A. Two or three years.

Q. And before that what position did you occupy? A. Division engineer of the Wyoming division.

Q. Of the Lehigh Valley Coal Company? A. Yes. 6569

Q. How long altogether have you been in the continuous employment of the Lehigh Valley Coal Company? A. Twenty-four years.

Q. You are a graduate of what college? A. I went to Lehigh University.

Q. Lehigh University? A. Yes.

Q. In what year? A. In 1889.

Q. And you have been engaged in your profession as mining engineer ever since you left college? A. Yes.

Q. Have you ever worked for the Lehigh Valley Rail- 6570
road Company? A. No, sir.

Q. Or any other railroad company? A. Yes, sir, I worked for the Norfolk & Western for a short time on their civil corps down in southwestern Virginia.

Q. When was that? A. In 1889, and 1890, just before I came to the Lehigh Valley Coal Company.

Q. Immediately after graduating from college, and just before you came to the Lehigh Valley Coal Company? A. Yes, sir.

Q. Have you prepared some maps showing the area of the coal properties of the New York & Middle Coal 6571
Field Railroad & Coal Company? A. Yes, sir.

Q. And Coxe Brothers & Company, Incorporated? A. Yes, sir.

Q. And the Lehigh Valley Coal Company? A. Yes, sir.

Q. Just take one of those maps. What does that map show, generally speaking? A. The map shows the outline of the different anthracite coal fields, the counties, rivers, streams, railroads and also outlines the lands of the Lehigh Valley Coal Company, outlined in red, 6572
showing the lines of the Lehigh Valley Coal Company, of Coxe Brothers & Company, Incorporated, and the New York & Middle Coal Field Railroad and Coal Company.

Q. In what colors have you marked the limits of the anthracite coal fields? A. They are outlined in blue.

Q. And what are the yellow areas which I see there? A. The yellow areas are the areas inside of the lowest workable coal measures.

6573 Q. Where did you get the data for the basis of this map? A. From the map of the Second Pennsylvania Geological Survey.

Q. Is this an exact reproduction of that official map? A. Yes, sir.

Q. I mean so far as the different data which you have referred to is concerned. A. The land lines.

Q. How did you put the land lines on this? I mean now the coal lands of the New York & Middle, Coxe Brothers & Company and the Lehigh Valley Coal Com-
6574 pany. How did you plot those up? A. Reducing them to this scale from our standard maps on file in our office.

Q. In what color and what outline was the lands of the New York & Middle and Coxe Brothers & Company, Incorporated, and the Lehigh Valley Coal Company spread upon the map? A. Outlined in red.

Mr. Wheaton: I offer the map in evidence.

Mr. Machen: You offer the three maps?

Mr. Wheaton: Yes.

Mr. Machen: Separate exhibits?

6575 Mr. Wheaton: Yes. I desire to make a note here that the witness has testified as if these exhibits were all one map, but they are in fact upon three separate maps.

Marked **Lehigh Valley Coal Company's Exhibits Nos. 4, 5 and 6.**

Q. In the preparation of the answer of the Lehigh Valley Coal Company, filed in this case you made figures showing the total acreage of coal lands held by the Lehigh Valley Coal Company, and located along the
6576 lines of the Lehigh Valley Railroad within the coal measures, did you not? A. Yes, sir.

Q. What is the total acreage of the coal lands so located held by the Lehigh Valley Coal Company? A. The total acreage is——

Q. (Interrupting.) We say, for example, in our answer, 24,748 acres are located along the lines of the Lehigh Valley Railroad within the coal measures. Is that a correct or an incorrect acreage? A. 27,785 is correct.

Q. Is the correct amount? A. Yes, sir. 6577

Q. Those figures 24,748 were the figures which you gave me at the time the answer was prepared? A. Yes, sir.

Q. Since that time you have discovered a slight error so that the correct amount is 27,785?

Mr. Machen: That is the Lehigh Valley Coal Company, is it?

The Witness: Yes, sir.

Q. What is the acreage, in a similar way, if such similarity exists, of Coxe Brothers & Company, Incorporated? A. 5,694 acres of Coxe Brothers & Company adjacent to the Lehigh Valley Railroad. 6578

Q. Now, referring to the acreage of the Lehigh Valley Coal Company, did you figure out the percentage which the total acreage of coal lands held by the Lehigh Valley Coal Company bears to the total acreage of anthracite coal lands in the districts in which the lands of the Lehigh Valley Coal Company lie? A. Yes, sir.

Q. At the time I was preparing this answer, in the short time you had to figure it, you made that 9 per centum of the total, did you not? A. Yes, sir. 6579

Q. Since that time you have carefully re-figured it and now what is the actual amount of percentage of the total acreage of coal land held by the Lehigh Valley Coal Company to the total anthracite acreage of the districts in which the Lehigh Valley Coal Company's lands lie? A. 10.3 per cent.

Q. 10.3 per cent.? A. Yes.

Q. So that in the exhibit, in the blue print at the back of the answer, instead of the expression "About 9 percentum" which appears in the section of the circle which is not cross hatched, there should be inserted 10.3 per cent.? A. Yes, sir. 6580

Q. Now, in tonnage, what is that proportion? A. It is about the same thing in tonnage. I haven't those figures just as I gave them to you. They are correct, though.

Q. It is practically the same proportion in tonnage that it is in acreage? A. Yes, sir.

6581 Q. Now, did you also figure up the total acreage of the coal lands held by the Lehigh Valley Coal Company lying along the lines of the Lehigh Valley Railroad and naturally and conveniently tributary to said road, and the percentage of such coal lands held by the Lehigh Valley Coal Company to all the anthracite coal lands which lie adjacent and naturally and conveniently tributary to the Lehigh Valley Railroad? A. Yes, sir.

Q. And if so, what is that percentage? A. It is 22.3 per cent.

6582 Q. So that in the smaller circle which appears at the end of the answer of the Lehigh Valley Coal Company defendant in this case where it says about 19.8 per cent., it should say what? A. 22.3 per cent.

Mr. Wheaton: Now, with those corrections I offer that blue print as an exhibit.

Marked **Lehigh Valley Coal Company's Exhibit No. 7.**

6583 Q. And the proportion of tonnage in this latter illustration which I have called to your attention is about equivalent to the proportion of acres? A. Yes, sir.

Q. Did you make a blue print calculation in which the full circle shows total anthracite acreage, and the open areas show the total acreage for Lehigh Valley Coal Company, Coxe Brothers & Company, Incorporated, and the New York & Middle Company? A. Yes, sir.

Q. And also upon the same blue print a full circle showing the anthracite acreage naturally and conveniently tributary to the Lehigh Valley Railroad? A. Yes, sir.

6584 Q. And the open area showing the Lehigh Valley Coal Company, Coxe Brothers & Company, and the New York & Middle acreage which transports over the Lehigh Valley Railroad? A. Yes.

Mr. Wheaton: I offer it in evidence.

Marked **Lehigh Valley Coal Company's Exhibit No. 8.**

Cross-Examination by Mr. Machen: 6585

Q. In Government Exhibit No. 120, containing among other things a list of coal lands leased by the Lehigh Valley Coal Company, Lessor to other persons or corporations, there is mentioned a lease from the Lehigh Valley Coal Company to the Philadelphia & Reading Coal & Iron Company, dated the first day of December, 1901, covering the North Franklin Colliery. Won't you give us an explanation as to the state of title to this tract? A. The lease expired, I don't remember the date, but it is on there. The lease expired that day. 6586

Q. On the 30th day of November, 1911? A. Yes, the 30th of November, 1911. The lease expired, but the P. & R. C. & I. Company have continued mining and we have accepted royalty under the terms of the old lease preparatory to making another lease.

Q. They have simply held over without any definite term? A. Without any definite term.

Q. These lands are the so-called Treverton lands, are they? A. Yes, sir.

Q. They lie on the Lehigh Valley Coal Company's Exhibit No. 6 at the extreme northwestern corner of the Middle Coal field? A. On the Western Middle, yes. 6587

Q. West of Shamokin? A. Yes.

Q. Are those lands on the line of the Lehigh Valley Railroad? A. No, sir.

Q. What railroad are they on? A. They are on the line of the Reading Railroad.

Q. And the Lehigh Valley Coal Company also own a one-half interest, I believe, in a portion of them, and a one-third interest in the other; is that correct? A. In the lands leased to the Reading, the Lehigh Valley owned a one-half interest, and the other is not leased. 6588

Q. The other is not leased at all? A. No, sir.

Q. Who owns the remaining one-half interest in the lands which are leased to the Reading? A. The P. &. R. C. & I. Co.

Q. So that the Reading owns one-half and leases the whole? A. And leases the other half, yes.

Q. Who owns the remaining two-thirds interest in the adjoining tract? A. I think the Philadelphia & Reading

6889 Coal & Iron Company own the major portion of the remaining two-thirds.

Q. Do you know when the Lehigh Valley Coal Company acquired its interest in those lands? A. I cannot recall the date. It was about 1873, I think.

Q. Do you know at what time the Lehigh Valley Railroad Company constructed its branch which now runs to Mt. Carmel? A. No, I do not, but I know that it was constructed before 1880, but I don't know how long before that time.

6890 Q. Mt. Carmel is the nearest point to these Treverton lands reached by the Lehigh Valley Railroad, isn't it? A. Yes, sir.

Q. What is the tract of land indicated on this map, Coal Company's Exhibit No. 6, belonging to the Lehigh Valley Coal Company, and situated about half way between the Treverton lands and Mt. Carmel? A. That is a tract we know as the Brown lands.

Q. Is there any colliery on that land? A. There is no breaker located on the land.

Q. It is worked? A. Partially.

6891 Q. By whom? A. By the Mineral Railroad & Mining Company, and by the Shipman Coal Company.

Q. When was this tract acquired by the Lehigh Valley Coal Company? A. I think about 1873. However, I could get that date exactly. It was acquired by the Green Land Company before 1873.

Q. You said that the basis of these maps, Coal Company's Exhibits numbers 4, 5, and 6, was the map published by the Pennsylvania State Geological Survey. Do you know who published this map? A. It was a map

6892 made originally by the State Geological Survey, and subsequently Ruley and Alder and others, who used the map as the map showing the anthracite coal fields, and it was from that map that this general outline was taken.

Q. From the Alder and Ruley map, which, in turn, was based upon this State map? A. Which was based upon the State Geological map.

Q. Do you know who was the surveyor or geologist under whose direction the State Geological map was

prepared? A. The geologist at the time of making the survey was Mr. Leslie, and his assistants were Mr. Hill and Mr. Ashburner, and then there were geologists in each of the different districts. 6593

Q. Now, in making your estimate as indicated by the heavy red lines, or orange lines, on the Coal Company's Exhibit No. 6 of the coal lands naturally tributary to the Lehigh Valley Railroad Company, what collieries did you include? A. In the Northern field, the Heidelberg No. 1.

Q. Who operates that? A. The Lehigh Valley Coal Company. 6594

Q. Just mention the name of the operator, if you know it, as you go along? A. I will give you a list of the Lehigh Valley Coal Company's collieries:

Heidelberg No. 1;
Middle Spring, Lehigh Valley Coal Company;
Warrior Run, Lehigh Valley Coal Company;
Franklin, Lehigh Valley Coal Company;
Dorrance, Lehigh Valley Coal Company;
Prospect, Lehigh Valley Coal Company;
Maltby, Lehigh Valley Coal Company; 6595
Westmoreland, Lehigh Valley Coal Company;
Exeter, Lehigh Valley Coal Company;
Seneca, Lehigh Valley Coal Company;
William A., Lehigh Valley Coal Company;
Sibley, Elliott, McClure & Company;
Pickaway, McCauley Coal Company;
Healey, Miners Mills Coal Company;
Hillman Vein, Wilkes-Barre Anthracite Company;
Troy, Remy Brothers; 6596
Mt. Lookout, Mt. Lookout Coal Company;
Forty-Fort, Forty-Fort Coal Company;
William E., Forty-Fort Coal Company;
Louise, Raub Coal Company;
Black Diamond, Black Diamond Coal Company;
East Boston, East Boston Coal Company;
Kingston No. 4, Kingston No. 2, Kingston Coal Company;

6597 Hollenback No. 2, Lehigh & Wilkes-Barre Coal Company;
South Wilkes-Barre, Lehigh & Wilkes-Barre Coal Company;
Stanton, Lehigh & Wilkes-Barre Coal Company;
Empire Washery, Lehigh & Wilkes-Barre Coal Company;
Maxwell, Lehigh & Wilkes-Barre Coal Company;
Sugar Notch, Lehigh & Wilkes-Barre Coal Company;
6598 Ridgewood, Traders Coal Company;
Red Ash, Red Ash Coal Company;
Red Ash, Nos. 1 and 2, Red Ash Coal Company;
Hadley, Pittston Coal Mining Company;
Buttonwood, Parrish Coal Company;
Buttonwood Washery, Parrish Coal Company;
Hallstead, D. L. & W. Railroad;
Pettebone, Lackawanna Railroad;
Loomis, D. L. & W. Railroad;
Bliss, D. L. & W. Railroad;
Truesdale, D. L. & W. Railroad;
6599 Auchincloss, D. L. & W. Railroad;
Langcliff, D. & H. Coal Company;
Delaware, Delaware & Hudson;
Laflin, Delaware & Hudson;
Pine Ridge, Delaware & Hudson;
Baltimore, Delaware & Hudson;
Baltimore No. 5, Greenwood Bros.;
One and Two, Delaware & Hudson;
Spring Brook, Delaware & Hudson;
Collieries Nos. 1 and 5, Susquehanna Coal Co.

6600 Q. Do you know what the names are, of Nos. 1 and 5? A. They do not name them.

The Consolidated Colliery, Hillside Coal & Iron Company;
Butler, Hillside Coal & Iron Company.

Q. These are all in the Wyoming Field? A. These are all in the Northern Field, Wyoming Region.

The Pennsylvania Coal Company No. 7; 6601
Old Forge, Pennsylvania Coal Company;
Central, Barnum, No. 3, Ewen, No. 14—

I think that completes the Northern Field.

Q. And then going to the Hazleton Field? A.

Eastern Middle, Hazel No. 1, Lehigh Valley Coal Co.;
Hazleton Shaft, Lehigh Valley Coal Company;
Spring Mountain, Lehigh Valley Coal Company; 6602
Spring Brook, Cranberry, A. Pardee & Co.;
Jeddo No. 4, G. B. Markle & Co.

Q. All of these are Markle's? A. Yes.

Jeddo No. 7, Highland No. 5, that is G. B. Markle & Co.'s.

Q. All of these are G. B. Markle & Company's? A. Yes. Jeddo No. 4 and all after are G. B. Markle & Company's. 6603

Highland No. 1, G. B. Markle & Co.;
Hazel Brook, J. S. Wentz & Co.
Hazel Mountain, Hazel Mining & Coal Company;
Harley, Harley Brookwood Coal Company;
Coleraine, Estate of A. S. Van Wickle;
Audenried, No. 4, Lehigh & Wilkes-Barre Coal Company;
Honey Brook, Lehigh & Wilkes-Barre Coal Company;
Beaver Brook, C. M. Dodson & Co.; 6604
Sandy Run, M. F. Kemmerer & Co.;
Upper Lehigh, Upper Lehigh Coal Company;
Dusky Diamond, T. R. Reese & Son;
Drifton, Coxe Brothers & Co., Inc.;
Beaver Meadow, Coxe Brothers & Co., Inc.;
Harwood, Harwood Coal Company;
Latimer, Pardee Brothers & Co.

6605 That completes the Eastern Middle Field. The Western Middle Field:

Ellangowan, P. & R. C. & I. Co.;
Mahanoy City, P. & R. C. & I. Co.;
Maple Hill, P. & R. C. & I. Co.;
North Mahanoy, P. & R. C. & I. Co.;
St. Nicholas, P. & R. C. & I. Co.;
Suffolk, P. & R. C. & I. Co.;
Tunnel Ridge, P. & R. C. & I. Co.;
Draper, P. & R. C. & I. Co.;
6606 Gilberton, P. & R. C. & I. Co.;
Indian Ridge, P. & R. C. & I. Co.;
Shenandoah City, P. & R. C. & I. Co.;
West Shenandoah, P. & R. C. & I. Co.;
Knickerbocker, P. & R. C. & I. Co.;
Austin Run, P. & R. C. & I. Co.;
Hammond, P. & R. C. & I. Co.;
Potts, P. & R. C. & I. Co.;
Bast, P. & R. C. & I. Co.;
Reliance, P. & R. C. & I. Co.;
6607 Hudson Washery, I don't know who owns that;
Hudson Washery, Cambridge Washery, Stanton, all small places; I don't know who are the owners.

Mr. Wheaton: They are operated by somebody else than the Lehigh Valley Coal Company?

A. Yes, they are not operated by the Lehigh Valley Coal Company.

Healey's Run, Healey Run Coal Company;
Oxford Washery, I don't know who operates
6608 that; not operated by the Lehigh Valley Coal Company;
Girard, Mammoth, that is the Raven Run Coal Company;
Girard, "McTurk & Company;
West Bear Ridge, this is not in operation now. That was the P. & R. C. & I. Co.

Q. These are all the Western Middle, are they? A. Yes.

Park No. 2, Lehigh Valley Coal Company; 6609
Packer No. 2, 3, 4 and 5, Lehigh Valley Coal Company;
Centralia, Lehigh Valley Coal Company;
Sayre, Lehigh Valley Coal Company;
Buck Mountain, Lehigh Valley Coal Company;
Midvalley, Midvalley Coal Company;
William Penn, Susquehanna Coal Company;
Middle Lehigh, New Boston Coal Company. That completes the Western Middle Field.

6610

Q. Did you include the Pennsylvania Colliery of the Susquehanna Coal Company? A. At William Penn?

Q. I don't know, it is marked here Pennsylvania? A. No, I don't think I did, we left that out; our line is east of that.

Southern Field, Blackwood, Lehigh Valley Coal Company;
Phœnix Park, P. & R. C. & I. Co. That is all.

Q. That is all? A. That is all. 6611

Q. On what basis did you go in determining what collieries to include in the territory which you have described as naturally tributary to the Lehigh Valley Railroad Company? A. Well, it was territory that it was possible to build railroads, branch lines, from the Lehigh Valley Railroad to serve this area.

Q. That is indicated here by straight lines on this Coal Company's Exhibit No. 6. I supposed, therefore, that you included every colliery in that area? A. Yes.

Q. And the area you simply laid down on the map with a rule? A. Yes, after I had examined the area. 6612
I knew the area; I knew the nature of the grounds.

Q. Didn't you make any estimate as to the cost of making connections to these various collieries? A. No, sir.

Q. Did you make any minimum estimate in your own mind as to the cost of building connections to any one of these collieries? A. No, sir.

Q. You don't know whether it would cost $10,000 or $5,000 or $100,000 to build a connection to any one of these collieries? A. Oh, I have a better idea than that.

6613 Q. What is your idea? A. It would cost various amounts, depending, of course, on the location of the colliery, in reference to the Lehigh Valley Railroad. Some are comparatively close, and some are at a great distance; some would go over comparatively level country, and would not be such a high expense as some of the others would be. Some of the others would be very expensive to the railroad.

Q. Which of them are now actually reached by the Lehigh Valley Railroad? A. All the collieries of the
6614 Lehigh Valley Coal Company, and Coxe Brothers, and all of the collieries in the Middle Field, I think that I mentioned are reached by the Lehigh Valley Railroad.

Q. You mean the Eastern Middle Field? A. The Eastern Middle, yes, I think they are all reached by the Lehigh Valley Railroad.

Q. That is the only railroad in that field, isn't it, that reaches any collieries, anyhow? A. Well, yes, that is right.

Q. Maybe it would be simpler to read off the ones that are now reached by the Lehigh Valley Railroad? A.
6615 Heidelberg No. 1.

Q. You can say at first all the collieries of the Lehigh Valley Coal Company and Coxe Brothers & Company, because that simplifies it, and then say other collieries. A. Collieries of the Lehigh Valley Coal Company and Coxe Brothers & Company reached by the Lehigh Valley Railroad. In the Northern Field, Sibley, Pickaway, Healey, Hillman, Troy, Mount Lookout, Forty Fort, Harry E., Louise, Black Diamond, Kingston No. 4 and Kingston No. 2.

6616 Eastern Middle: Cranberry, Jeddo No. 4, Jeddo No. 7, Highland No. 5, Highland No. 2, Hazel Brook, Harley. That is all in the Eastern Middle.

Western Middle Field: Mid Valley and Middle Lehigh that is called Morea.

Q. There is a Middle Lehigh operated by the Mill Creek Coal Campany and a Morea operated by the Dodson Coal Company? A. The Morea and New Boston are together and they speak of that as the Middle Lehigh area. The New Boston Coal Company has the Middle Lehigh and New Boston.

Q. On Railroad Company's Exhibit No. 54 the Mill Creek Coal Company is named as the operator of the Middle Lehigh Colliery? A. I think that is a mistake. I think it is the New Boston Coal Company. The Mill Creek Coal Company are the same concern, the same people. 6617

Q. The New Boston Colliery is the same as the Morea colliery? A. No, sir, the two collieries are right together. The New Boston and Morea. The New Boston is operated by the New Boston Coal Company, or the Middle Lehigh, they speak of it; it is sometimes called the Middle Lehigh Colliery, and the Morea is operated by the Dodson. 6618

Q. But the Middle Lehigh and the New Boston are the same? A. Yes, it is a little area down below the Eastern Middle Field. There are no collieries in the Southern Field that ship over the Lehigh Valley Railroad other than the Lehigh Valley Coal Company's collieries.

Q. There are no collieries now in the Southern Field actually connected with the Lehigh Valley Railroad, except the Blackwood? A. That is right.

Q. Of all the collieries not now connected with the Lehigh Valley Railroad, which is the furthest removed of those you have included in the area tributary to the Lehigh Valley Railroad from that railroad? A. I would say the Susquehanna collieries at Atlanticville. 6619

Q. How far are they removed from the Lehigh Valley Railroad? A. Well, in a direct line, about a mile and a half I should judge. It would take probably about three miles of track or more, to reach their colliery.

Q. On account of the grading? A. Yes.

Q. You say you have made no estimates at all as to the expense of connecting these various collieries with the Lehigh Valley Railroad? A. No, I have made no estimate. 6620

Q. You have some idea, however, what do you mean by that? A. Well, I meant by that other roads have been built in the coal regions that would be no more—that other roads that were built in the coal regions that would be more expensive than the road contemplated to these collieries than we assumed in that area.

6621 Q. It has not been at all an uncommon thing, in fact, in the former history of the anthracite coal regions, for a railroad to build quite a considerable piece of track in order to reach a single colliery line? A. They have built tracks for three or four—two or three miles anyhow.

Q. For large collieries they have gone even further than that, haven't they, for instance, the Blackwood Colliery of the Lehigh Valley Coal Company is reached by a branch four or five miles in length, isn't it, con-
6622 structed by the Lehigh Valley Railroad Company? A. No, I don't think it is that long. (After examination of map.) Where we show, I don't understand this road was built for the Blackwood colliery, the whole line, from Lizard Creek Junction.

Q. You don't understand that the whole line from the connection with the main line of the Lehigh Valley Railroad down the Bowman's Field, or some such place, was built in order to reach the Blackwood Colliery? A. Oh, no.

Q. That would be about twenty miles? A. Yes, some-
6623 where around twenty miles.

Q. There is, however, no other colliery on that branch of the Lehigh Valley Railroad other than the Blackwood colliery? A. No, sir, that is the only colliery we have there. We formerly had other collieries there, but not at the present time.

Q. What became of the others? A. We had a colliery at Pottsville, just west of Pottsville, a colliery that had been worked for a number of years and was abandoned temporarily.

6624 Q. The Blackwood colliery is a small colliery, isn't it? With an output of about—— A. About 1,200 tons a day.

Q. How much does that make a year? A. That makes about 300,000 tons a year.

Q. Not a very large colliery? A. No, no.

Q. Is there a city of any size on that branch of the Lehigh Valley Railroad running to the Blackwood colliery? A. Pottsville.

Q. Does that reach Pottsville? A. Oh, yes, it goes right into Pottsville.

Q. What cost do you regard as prohibitive for connecting the railroad with a colliery. A. Well, I have had no experience in estimating branch railroad lines. 6625

Q. $100,000? A. A mile?

Q. No, I mean the total amount? A. Of course, it would depend very largely on what the railroad expected to get on the other end of the line how much they would spend on the railroad.

Q. What the size of the colliery and what the output, and how many years it had run? A. Exactly. Of course that would be the calculation.

Q. But for a large colliery with many years to run, you would not regard $100,000 as the total amount to be expended as an extravagant sum to reach the colliery? A. I should consider it a very large sum for a branch to any colliery. 6626

Q. What would you consider a reasonable sum, then? A. It depends on the quantity and quality of coal to be gotten from the colliery.

Q. Suppose we had a colliery producing a million tons a year? A. We have so few of that kind, it is hard to say. 6627

Q. There are several belonging to the Lehigh Valley Coal Company, aren't there? A. Not producing a million tons a year.

Q. The Prospect produces over a million? A. That is the only one.

Q. Suppose we have a colliery producing 500,000 tons a year, and expecting to run for twenty or thirty years longer at least, what would you regard as a reasonable sum to spend to reach that colliery? A. Well, I don't know. 6628

Q. You testified that of the lines within the coal measures, about 27,785 acres were held by the Lehigh Valley Coal Company? A. Yes.

Q. And along the line of the Lehigh Valley Railroad Company? Was that correct? A. That was correct.

Q. Therefore, that excludes the Treverton and the Brown lands, which are off the Lehigh Valley Railroad. A. Yes.

Q. How many acres are there in the Treverton lands, about? A. Well, there is about three thousand acres.

6629 Of course, we only own half, and that would be 1,500 acres.

Q. You own a half interest in that, and one-third interest in another? A. In the Treverton only one-half, and half in another tract.

Q. You do not include those as the Treverton lands, that tract in which the Coal Company owns a one-third interest? A. The tract that we know as the Treverton land is the tract in which we have the one-half interest.

Q. What do you call the adjoining tract in which the
6630 Lehigh Valley Coal Company owns a one-third interest? A. We know that tract as the associated land.

Q. What is the acreage of those lands? A. About 4,000 acres. We have an undivided one-third interest.

Q. And then the Brown lands, the Coal Company owns absolutely, owns in fee? A. Yes; they own the fee in the Brown lands entirely.

Q. And how many acres are they? A. About eight hundred acres.

Q. Now, these are the only lands, these Brown lands, Treverton lands, and the associated lands, are the only
6631 lands owned or leased by the Lehigh Valley Coal Company, or by the Coxe Brothers & Company, or by the New York & Middle Coal Field Railroad & Coal Company, or by the Wyoming Valley Coal Company, which are not on the line of the Lehigh Valley Railroad Company, is that true? A. No, sir.

Q. What other lands? A. The Pottsville lands, the Schuylkill County lands.

Q. Excepting lands lying to the west of the Blackwood Colliery? A. Yes.

6632 Q. In the extreme southern—on the edge of the Southern field, how many acres of coal bearing lands, within the coal measures are the last mentioned tracts? A. I can give you that.

Q. Let us have that? A. 1,197 acres.

Q. Within the coal measures? A. Within the coal measures.

Q. When were these lands acquired, about? A. About 1887.

Q. And the branch which now runs to the Blackwood Colliery was constructed in the earlier 90's, wasn't it? A. I think it was. 6633

Q. And these lands lie just west of the coal lands belonging to the Lehigh Valley and now occupied by the Blackwood Colliery? A. Yes.

Q. In your estimate, which you gave—circular estimate—of the total acreage in the anthracite coal fields and of the proportion owned or leased by the Lehigh Valley Coal Company, which was 10.3 per cent., you did not include the lands leased by the Lehigh Valley Coal Company, the lands of the Coxe Company, or of the Wyoming Valley Coal Company, or of the New York and Middle Coal Field Railroad and Coal Company, did you? A. No. We made separate estimates for those. For the New York & Middle, and for the Coxe Brothers and Company. 6634

Q. But even upon that plot you have not included the lands owned by the Wyoming Valley Coal Company? A. No, sir.

Q. On Lehigh Valley Coal Company's Exhibit No. 8? A. No, they are not included. 6635

Q. Have you included in the open area in this exhibit, Coal Company Exhibit No. 8, the lands that are owned in fee by the Lehigh Valley Coal Company and other subsidiary companies, to the Lehigh Valley System, but leased to other operators, such as, for instance, the land owned by the Lehigh Valley Coal Company under lease to the Forty Fort Company that operates the—— A. No, that was leased by the Wyoming Coal Company, that is not included. I was trying to think of a case.

Q. There is a small piece of land leased by the Lehigh Valley Coal Company to the Healy Company? A. That is included. 6636

Q. The Miners' Mills Coal Company? A. The Miners' Mills Coal Company.

Q. The Miners' Mills Collery? A. Yes.

Q. You have included that? A. Yes.

Q. But that is not operated by the Lehigh Valley Coal Company? A. No.

6637 Q. Have you included within the open area, lands which are not owned by the Lehigh Valley Coal Company, but are leased to it? A. Yes.

Q. You have not included simply the lands which it holds in fee? A. No, lands owned in fee and leased. Coal lands that they control either by lease or fee.

Q. But you have excluded lands owned by the Wyoming Valley Coal Company? A. Yes.

Q. Including the lands leased to the Forty Fort Coal Company, that is, the Harry E. Colliery and the Forty
6638 Fort Colliery? A. The Forty Fort Coal Company operates both of those collieries.

Q. But you have not included those at all? A. No, sir.

Q. The answer of Coxe Brothers & Company in this case, on Page 3, contains the following averment: "It, that is, Coxe Brothers & Company, Incorporated, held in fee or under long term leases about 36,490 acres of land in the anthracite producing regions of Pennsylvania, along the lines of the Lehigh Valley Railroad, of which lands it is estimated about 7,169 acres contain
6639 varying quantities of anthracite coal." Now, your estimate of the lands owned or leased by Coxe Brothers & Company, and containing anthracite coal, was only 5,000 acres, wasn't it. A. 5,694.

Q. How do you explain the difference between your estimate and the answer of Coxe Brothers & Company, Incorporated? A. This is correct. I do not attempt to go any further than that. The figures I just gave you are correct.

Q. Is the difference due to the fact that your figure
6640 is confined to lands that are located along the lines of the Lehigh Valley Railroad, and which you describe as naturally tributary to the Lehigh Valley Railroad? A. All of the Coxe lands we treated as tributary to the Lehigh Valley Railroad, that is Coxe Brothers & Company,——

Q. Has Coxe Brothers & Company acquired any coal lands since 1905? A. No, sir.

Q. Have you included in your open area on coal company's exhibit No. 8, the land owned by the New York

& Middle Coal Field Railroad & Coal Company, and leased by them to the Midvalley Coal Company? A. That included the total ownership of the New York and Middle Coal Field Railroad and Coal Company, which includes the lease to the Midvalley Coal Company. 6641

Q. Includes the lease of the Midvalley Coal Company, and also that lease of the Lehigh Valley Coal Co.? A. Yes.

Q. Does the open area in this exhibit, coal company's exhibit No. 8, include the Markle coal lands? A. No; it does not. 6642

Q. How much does coal bearing land bring per acre? A. It varies. All kinds of prices. There have been prices up as high as $9,000 an acre and from there to very small amounts, comparatively small amounts.

Q. What was this $9,000 an acre sale you speak of? A. From sales near Wilkes Barre, I think, that would average about that.

Q. Was that on account of the coal exclusively or of the surface value of the land? A. That was for the coal exclusively, and on account of its position in reference to some other colliery, I think. 6643

Q. A sort of hold up price wasn't it? A. I think so, it was a very unusual price.

Q. About $3,000 an acre is considered a high price up there, isn't it, for coal bearing land? A. No, that would be a low price for lands around where you have a given thickness of coal, it all depends upon the number of veins and the quality of the veins on the tract. There is the greatest kind of variation in the quality of the coal and the thickness of the coal, the number of veins, and consequently there is the greatest kind of variation in price paid for the coal lands. It is very irregular. 6644

By Mr. Wheaton:

Q. Mr. Humphrey, take it right in the single region like that portion of the region you call the Wyoming Valley, running from Nanticoke on the south and Pittston on the north, continuous coal lands, the quality of underlying coal from a number of veins varies from one end of that section to the other very considerably, does it not? A. Yes, very considerably.

6645 Q. For example, in the lower part of that region below Wilkes-Barre, between Hanover Township, they get the veins of a total aggregate thickness of sixty or sixty-one feet? A. Yes.

Q. And following that right out to the valley up at Pittston the veins will not be in the aggregate more than thirty feet? A. They will be very much less than that; there are collieries up there where the only vein on the property would be a three or four foot vein.

Q. Are they all in contiguous anthracite coal lands?
6646 A. Yes.

Q. And it is true of all of them, is it not? A. Yes.

Q. There will be a variation in contiguous properties, a wide variation not only in the number of veins, but in the thickness of the veins, compared with other adjacent property? A. Yes, sir, a very big difference in the same vein.

Q. How do you get that figure of 27,785 acres—the acreage, how do you get that figure? A. That is the area of the Lehigh Valley Coal Company's holdings, either by lease or fee, adjacent to the Lehigh Valley
6647 Railroad, and that was gotten by measurement, and is indicated on that map under the exhibits here.

Q. Lehigh Valley Coal Company's Exhibit No. 1? A. No, 6.

Q. Now, is it true, Mr. Humphrey, if there have been instances as set forth by the Government counsel when a railroad has seen fit to go out a distance of five or six miles or more to reach a colliery if you had adopted that suggested and extended the lands which you have called tributary to the Lehigh Valley Railroad Com-
6648 pany, or the Lehigh Valley Coal Company, taking, for instance, five or six miles more, then the percentage of the Lehigh Valley Coal Company would be still smaller, wouldn't it, than it is now? A. Yes.

By Mr. Machen:

Q. What total acreage did you say you regarded as naturally tributary to the Lehigh Valley Railroad within the coal measures? A. 124,839.

Mr. Wheaton: All the acreage naturally tributary to the Lehigh Valley Railroad? 6649

The Witness: That is what we considered tributary to the Lehigh Valley Railroad.

Mr. Wheaton: How do you get your percentage of 10.3 per cent.? Give us your figures, how you got that figure.

The Witness: That 10.3 is the percentage of the Lehigh Valley to the whole anthracite coal.

Mr. Wheaton: That is not the 10.3 percentage.

The Witness: No. 6650

Mr. Wheaton: But it is a 20 and some odd percentage.

The Witness: Yes, sir.

Q. In other words, you mean this 10 per cent., or in other words, 10.3 per cent. of the total anthracite area in existence which is held by the Lehigh Valley Coal Company?

Mr. Boles: This is in Pennsylvania.

Mr. Machen: There isn't any outside of Pennsylvania to speak of, is there? 6651

Mr. Boles: Yes.

The Witness: In Rhode Island.

Q. In Rhode Island? A. Yes, and in Colorado.

Q. That is not large enough to affect the percentage, and that 10 per cent. does not include the acreage of Coxe Brothers & Company or the New York and Middle Coal Field, or the Wyoming Valley Coal Field? A. No, sir.

Q. And the Lehigh Valley Coal Company and Coxe Brothers & Company, and the New York & Middle Coal Field own about 13 per cent. of the total anthracite coal bearing acreage in existence in Pennsylvania? A. No, it would not be that much. Let's see. 6652

Q. Ten per cent. and two per cent. and three-quarters of a per cent. make just about a little more than 13 per cent.? A. That is three-tenths of one per cent., not three-fourths of one per cent. It is 12.6 per cent., the sum of those three percentages.

Q. And that excludes the acreage owned by the Wyoming Valley Company? A. Yes, sir.

6653 **William A. Cochran**, a witness called on behalf of the Lehigh Valley Coal Company, being first sworn, and testified as follows:

Direct Examination by Mr. Wheaton:

Q. Mr. Cochran, you live in Pottsville? A. I do.

Q. In Schuylkill County, Pennsylvania? A. Yes, sir.

Q. You are a mining engineer? A. Yes, sir.

Q. Of how many years practice? A. I have been a member of the firm of A. B. Cochran & Sons since April, 1889.

6654 Q. In continual practice? A. Continuous practice.

Q. And you are familiar with all the anthracite coal regions of Pennsylvania? A. I have a general knowledge of the entire field.

Q. Now, did you figure out the total acreage of coal lands held by the Lehigh Valley, and make a comparison of that acreage with the total holdings of anthracite coal in the district in which the Lehigh Valley Coal Company own or lease anthracite coal lands? A. I did.

Q. What proportion of the anthracite coal lands in 6655 that district is owned or leased by the Lehigh Valley Coal Company? A. 10.3 per cent.

Q. Did you also make a calculation of the tonnage so held in like manner? A. Yes, I did.

Q. And how did you find a proportion as to tonnage compared with acreage? A. It agrees very closely.

Q. Very closely the same? A. Yes.

Q. Did you also make a calculation in terms of tonnage of the total quantity of anthracite coal purchased by the Lehigh Valley Coal Company, naturally tributary and adjacent to the Lehigh Valley Railroad Company and 6656 of other anthracite tonnage, naturally tributary to the Lehigh Valley Railroad Company, and compare the two, and if so what proportion did you find that to be. A. I found that the Lehigh Valley Coal produced about twenty per cent. of the total tonnage shipped from lands that are conveniently accessible to the Lehigh Valley Railroad Company.

Q. Now, did you indicate upon a map, and, if so, was it upon Exhibit 6, of the Lehigh Valley Coal Company

the area which you considered to be naturally tributary 6657
to the Lehigh Valley Railroad as far as anthracite tonnage is concerned? A. I would like to examine the map, I am not familiar with the numbers. (After examination of map.) That is it.

Q. And it shows on there in what way? A. The areas in several fields that are conveniently accessible to the Lehigh Valley Railroad Company are shaded in pink.

Q. Did you also estimate in like manner the proportion of acreage and tonnage of Coxe Brothers & Company, Incorporated, and the New York and Middle Coal 6658
Field and Railroad and Coal Company? A. I estimated Coxe Brothers & Company, but I did not really estimate the New York and Middle Coal Field.

Q. And what did you find that to be? A. I found that Coxe Brothers & Company held 1.84 of the total anthracite coal acreage, say about 1.8 per cent.

Q. And did you calculate with reference to Coxe Brothers & Company as to its proportion to anthracite coal that was naturally tributary to the Lehigh Valley Railroad? A. I did. Its proportion is about 4.66, or say 4.6 for short. 6659

Q. Does that appear upon that blueprint? A. I have not examined these blueprints. I will see. (After examination of blueprints.) A. Yes it does. I think there has been a change, perhaps, in the percentage, but the price is shown on this.

Q. Have you gone over the three maps offered in evidence, Lehigh Valley Exhibits No. 4, 5 and 6? A. I have.

Q. And do they correctly portray what they purport to exhibit? A. They do. 6660

Cross-Examination by Mr. Gordon:

Q. Mr. Cochran, you have heard the testimony of Mr. Humphrey, who immediately preceded you? A. Yes, Mr. Gordon, I have.

Q. Do your figures coincide with those of Mr. Humphrey? A. Yes, Mr. Gordon. We checked the figures for that purpose.

6661 Mr. Machen: Oh, worked together?

The Witness: We worked together, but I really considered my work was in the nature of a check of this work.

Q. You came to the same final conclusions? A. Yes.

Q. Your figures coincided exactly? A. Yes.

Q. You agreed with him as to what territory is tributary to the Lehigh Valley Railroad? A. Yes, Mr. Gordon, I think, while that is in a measure tributary
6662 I think that was perfectly proper and I agreed with Mr. Humphrey perfectly in what he has done.

Q. How extensive an investigation did you make to determine what territory was naturally tributary to the Lehigh Valley Railroad? A. I have had a general knowledge of the regions. From long association, and in the Northern Field where I have spent less time than the others I made a tour of the grounds and looked the situation over generally, although I did have an idea of it even before that time.

Q. How long did you spend in your tour of investiga-
6663 tion of the Northern Field? A. I can say this: in this last tour I was there two different times, nearly a half day each, but I examined a great many properties in the Northern Field, during the time covering the same general territory, so I was not a stranger.

Q. How many collieries did you determine to be naturally tributary to the Lehigh Valley Railroad in the Northern Field? A. I cannot tell you unless I count them in the list.

Q. There will be a considerable number? A. Yes.

6664 Q. Twenty? A. I would rather have you count them. There are more than that.

Q. More than twenty? A. Yes.

Q. Did you go to each one of these collieries personally and survey the approach to these collieries to determine whether a railroad could be built there, a branch could be built there, by the Lehigh Valley Railroad at a reasonable expense? A. I did not, but I could not only see it on the ground but I had access to the Government topographical map, and I examined it then.

Q. You did not then, go personally to each of these collieries which you determined to be naturally tributary to the Lehigh Valley Railroad? A. I did not think it was necessary, Mr. Gordon. 6665

Q. You did not think it was necessary? A. No.

Q. Neither did you have any railroad engineer assist you in making a survey to determine the relative expense of connecting these collieries? A. No, I did not.

Q. It appears upon the map, Lehigh Valley Coal Company Exhibit No. 6, the line of demarkation, between the territory naturally tributary to the Lehigh Valley Railroad, and territory not so tributary is laid out in mathematically straight lines, is it not? A. Yes. 6666

Q. And these lines cross the canoe shaped regions of the Wyoming Region, the Western Middle Region and the Southern Region in a general way at right angles to the long axis of the region, do they not? A. Yes.

Q. Now, is it not a fact, Mr. Cochran, that there are many very steep mountain ridges running lengthwise along these coal regions? A. Yes, sir.

Q. And might it not be the fact that while as the crow flies, a colliery would be perhaps only half a mile from the Lehigh Valley Railroad, there might intervene a very precipitous mountain ridge, which would be wholly impracticable to surmount? A. I want to say here, Mr. Gordon, that that is all perfectly proper, but these are average lines, they are not intended to denote any great degree of accuracy. 6667

Q. Then you admit that there might be within these areas smaller area, which, as a matter of fact, could not practicably be reached; your statement is merely a general statement? A. No, I would not say it could not be reached, I say this, that if this area is—these straight lines were average lines, the area might run in and out, run east and west of this line and, of course, to the valleys or ridges. 6668

Q. But by reason of the mountain ridge which might run for a considerable distance along these areas of influence might it not be as a practical matter, impossible for the Lehigh Valley Railroad to reach some of the territory within your pink shaded lines? A. Not within the confine as shown on this map.

6669 Q. There are collieries in these areas of influence which are naturally tributary to the Lehigh Valley Railroad? A. I'd rather use the term "accessible," I rather prefer that; which are conveniently accessible.

Q. What distinction do you make between the two terms? A. Tributary has to me a different meaning from accessible.

Q. What is the difference in meaning? A. Well, the first has a suggestion of paying tribute, that is the first meaning of tributary, and accessible means, so that you
6670 can get to a certain place conveniently. That is the idea, I am talking as a matter of notation.

Q. There are collieries which you say are accessible to the Lehigh Valley Railroad, which are not at present reached by the Lehigh Valley Railroad? A. Yes.

Q. Then other railroads beside the Lehigh Valley penetrate these areas which you say are accessible to the Lehigh Valley? A. Yes.

Q. Would the collieries on the Lehigh Valley Railroad within these areas be as accessible to those railroads as the collieries on these railroads are accessible to the Le-
6671 high Valley? A. Generally, yes.

Q. Take the Blackwood Colliery, for instance, in the Schuylkill region, would that be, under your standard of accessibility, as accessible to the Philadelphia & Reading? A. It would be accessible to the Philadelphia & Reading Railway.

Mr. Machen: Do you include that as conveniently accessible to the Philadelphia & Reading Railroad?

The Witness: It would be conveniently acces-
6672 sible to the Philadelphia & Reading Railway.

Mr. Machen: In your definition?

The Witness: Yes.

Q. Take Packer No. 4, No. 257 on the map here? A. That is the Westerly Middle Field.

Q. Take the Packer Colliery No. 4; under your standard of accessibility that would be conveniently accessible to the Philadelphia & Reading Railroad Company, would it not? A. Yes.

By Mr. Machen: 6673

Q. You included the Bast Colliery as conveniently accessible to the Lehigh Valley Railroad Company, didn't you; one of these Mr. Humphrey read off? A. Yes, I did.

Q. By the same token would you regard the Centralia colliery as conveniently accessible to the Philadelphia & Reading Railway? The Centralia colliery being—— A. The Centralia would be a different proposition. I would not care to express an opinion until I had a chance to examine it on the grounds. It is very doubtful in my 6674 mind whether that should be included in that way.

By Mr. Gordon:

Q. Take Heidelberg No. 1, the Wyoming region which is now reached by the Lehigh Valley Railroad. Under your standards—that is also conveniently accessible both to the Delaware & Hudson and the Erie Railroad, is it not? A. Yes.

Q. Take the Seneca colliery, in the Wyoming region, that would also be conveniently accessible, I suppose, to Delaware, Lackawanna & Western Railroad and the 6675 Erie Railroad, would it not? A. Yes.

Q. And similarly in the Wyoming region, the Troy colliery and the Westmoreland colliery would be conveniently accessible—the Westmoreland and William A would all three be conveniently accessible to the Delaware, Lackawanna & Western Railroad? A. Yes.

Q. Speaking in a general way, isn't your standard rather that of geographical proximity than anything else? A. Yes.

6676

By Mr. Wheaton:

Q. That list of collieries which you say are conveniently accessible to the Lehigh Valley Railroad are all working collieries at the present time, aren't they? A. They are.

Q. And there is nothing on the grounds, in other words, either in the way of ridges or depressions or physical conditions which would prevent their being connected up with the Lehigh Valley Railroad? A. No barrier of any kind that would prevent this connection.

6677 By Mr. Boles:

Q. Mr. Cochran, the government petition in this case says that the Lehigh Valley Railroad, among others, has tried to monopolize the sale and transportation of coal naturally tributary—it uses those words "naturally tributary" to its lines. Were those two words called to your attention when you went to work on this? A. No, I did not look at it in that light at all; I did not view it from that standpoint.

Q. Were you in Pottsville at the time of construction
6678 of the Schuylkill & Lehigh Valley Railroad? A. Yes.

Q. Do you know any of the men who promoted that railroad? A. I don't know who promoted it. I can remember very well when the line was opened in 1890.

Q. You can remember it? A. I was there at the opening of Blackwood Colliery in 1890, when they shipped the first coal from the Blackwood Colliery.

Q. What towns lie between Pottsville and Lizard Creek Junction? A. There isn't very much except Orwigsburg and there are quite a number of small settlements, but there isn't anything of consequence.

6679 Q. The Lehigh Valley Railroad Company's Exhibit No. 54, in this case, Mr. Cochran, in reference to Packer No. 4, states that the Philadelphia & Reading Railway comes within four thousand feet of that colliery, but that a track connection is not practicable for the reason that the tracks of the Philadelphia & Reading Railway are on the opposite side of the valley, and to make a connection the Philadelphia & Reading would have to do a tremendous amount of filling in over the Girard Estate property, the surface of which is constantly
6680 sinking on account of the removal of underground coal, or if the Philadelphia & Reading did not do any filling in, it would have to bridge the gap, or trestle work, either of which does not make it practicable for them to reach the colliery. What do you say as to that? A. I can merely say I have never made an examination for that purpose. I am giving general information without having made any special examination.

Q. Then when you answered Mr. Gordon in this case to the effect that these different collieries that he had men-

tioned are conveniently accessible to the railways, you are answering just from your general knowledge of the situation, and your present examination of these maps? A. I know the country in a general way, and I knew they were not very far away from the collieries; but I did not make a special examination for that purpose. 6681

Q. Now, then when I asked of you as to whether they are conveniently accessible to the other railroads, than the Lehigh Valley, such as the Philadelphia & Reading, and the Delaware & Hudson and Lackawanna, you are answering merely by reference to the maps, are you? A. Well, from maps and from other topographical maps, and from general knowledge of the country, not having investigated each particular case. It is general information I give. 6682

Q. When you say the Blackwood colliery is conveniently accessible to the Philadelphia & Reading Railway did you have in mind the fact that it would require a sixteen degree curvature track to reach the Blackwood? A. For the Philadelphia & Reading to reach the Blackwood?

Q. Did you have that in mind? A. I haven't made any investigation of that kind. 6683

Q. What would you say would be the building distance between the Erie and Heidelberg No. 1 colliery? A. I could not give you that, Mr. Boles, I have given that in a general way, merely stating the lands obtained within the scope of these drawings.

Q. You made no particular investigation to determine what the cost of construction would be for a siding between the Heidelberg and the Erie? A. I did not; my information of this character is general. 6684

Q. Can you state from your knowledge of the situation there, on the map you have before you, whether or not a track connection is a practicable thing between that colliery and the Erie Railroad? A. I could not be positive.

Q. Could you even be reasonably positive unless you went up there and looked at it as an engineer and on the grounds and considered every surrounding circum-

6685 stance? A. I would be obliged to make a particular investigation in each case.

Q. You would be obliged to be sent out on that particular one, just as you were sent out in this particular case to determine the collieries, which you considered conveniently accessible to the railroad? A. Yes.

Q. You have made no examination to find out whether these different collieries are conveniently accessible to the other railroads, have you? A. No, sir, I did not; but I did know that they were in the immediate neigh-

6686 borhood.

Q. Do you know that from those maps that you have before you? A. Yes, that is all.

Q. But you cannot build a railroad by looking at a map, can you? A. No, I cannot.

Q. Now, as to the Seneca Colliery in the Wyoming region, where is that colliery located in respect to the City of Pittston? A. It is near Pittston Junction.

Q. Did you have in mind, in making your answer to Mr. Gordon, that it would be necessary for the Erie Railroad to buy a right of way, right through the City

6687 of Pittston to get there? A. No, I did not; I made no estimate of that kind at all.

Q. Exhibit No. 54 of the Lehigh Valley Railroad shows that the Delaware, Lackawanna & Western is within 3,000 feet of the Troy Colliery, and that the Delaware, Lackawanna & Western runs very close to this colliery on the south side of the West Pittston branch of the Lehigh Valley Railroad. Did you have in mind, in making your answer to Mr. Gordon, that the Delaware, Lackawanna & Western Railroad would have to

6688 cross the tracks of the Lehigh Valley Railroad in order to get into that colliery? A. No, I am merely giving this statement in the same general way.

Q. And that the Delaware, Lackawanna & Western would also have to cross the tracks of the Lehigh Valley in order to get into the Westmoreland Colliery? A. I did not make such investigation.

Q. And that the Delaware, Lackawanna & Western Railroad would have to cross the Lackawanna River in

order to get into the William A. colliery? A. He did not inquire as to the William A. 6689

Q. Yes, he did; he included all three in one question. A. At any rate, the same answer would apply to that if he did.

Q. Now, to give the careful and accurate answer, which you always desire to give, to a question as to whether a colliery is within practicable building distance of some other railroad than the Lehigh Valley Railroad, you would want to go on the ground, wouldn't you, and examine the exact conditions there? A. I would have to examine each case separately, certainly. 6690

Q. And you have had no opportunity to do that in order to answer Mr. Gordon, have you? A. No, I have only given him general information, of course.

Q. You would not want to advise promoters of a railroad to build a track on the information you have now given us here? A. I have no information of that kind at all.

Q. But you feel qualified to go and get it? A. Yes, I do.

6691

Re-cross Examination by Mr. Machen:

Q. In other words, if I understand correctly, Mr. Cochran, you have applied, in answer to Mr. Gordon's questions, the same geographical standard which you applied in preparing this map, which has been offered in evidence from the Lehigh Valley Coal Company's Exhibits No. 4, 5 and 6, isn't that so? A. Let me have that again?

Q. (Question read.) A. Not entirely so, Mr. Machen. My attention was particularly called to the Lehigh Valley Railroad in making this examination. 6692

Q. Yes, but in determining whether a colliery was naturally tributary, to use the language of these exhibits, or conveniently accessible, to use your language, to the Lehigh Valley Railroad, you took a certain geographical area? A. Yes.

Q. And you included as naturally tributary to the Lehigh Valley Railroad, everything within that area, didn't you? A. Yes, that is true.

6693 Q. Now, if you applied the same standard to some other railroad, for instance, the Central Railroad of New Jersey, or the Philadelphia & Reading, or some other railroad, you would take some given area, and would include as naturally tributary or conveniently accessible to that railroad, all the collieries within a certain area, wouldn't you? A. That is true to this extent, that this was based upon the Lehigh Valley Road as the unit of this system, and then afterwards applied to the——

6694 Q. But what I am trying to get at is this: If you applied to some other railroad the same standard that you applied to the Lehigh Valley Railroad, you would reach a conclusion that some of the collieries which are on the Lehigh Valley Railroad now and not any other railroad, would nevertheless be treated as conveniently accessible to some other railroad? A. Yes, some of them would.

Mr. Boles: One or two?

Mr. Machen: I object to that.

6695 The Witness: I think you and I understand each other; in that we have taken the Lehigh Valley as the main stem and laid that out, that is, to show the collieries that would naturally be accessible to it.

6696 Q. Take, for instance, the Prospect colliery of the Lehigh Valley Coal Company; the Central Railroad of New Jersey runs within two hundred feet of that colliery I believe, and the Delaware & Hudson within thirty two hundred feet. Now, if you were making out a similar table for the Delaware & Hudson people to that which you have prepared for Judge Wheaton in this case, of the collieries that are naturally tributary or conveniently accessible to the Central Railroad of New Jersey, you would include the Pospect Colliery, would you not? A. I would.

Q. And the same way if you were doing it for the Delaware & Hudson you would also indicate it? A. I would.

By Mr. Boles: 6697

Q. You would go on the ground first and look at the conditions? A. I certainly go on the grounds, of course.

By Mr. Machen: But you went over the grounds for this purpose? A. I went over the grounds for the Lehigh Valley Line, but not for the others.

By Mr. Boles:

Q. You did not go over the grounds to determine whether any of these lands were conveniently accessible 6698
to railroads other than to Lehigh Valley Railroad? A. I did not; I went over with the Lehigh Valley Railroad in mind.

Q. You mean with only the Lehigh Valley Railroad in mind? A. That is right.

By Mr. Machen:

Q. But you stated, I think, that you relied more largely upon your general knowledge of the country than upon the very hasty special examination which you made 6699
of this matter.

Mr. Boles: He didn't say it was hasty.

The Witness: I did say this to you: That I had a general knowledge of the valley for a good many years. I merely said my experience was not confined to the two half days which I have mentioned, but has run over a long period of years; for instance, I have been the inspecting engineer to one Company at Plymouth for fifteen years continuously, and I examined—in 1898—I examined the 6700
properties owned by the Lehigh Valley Railroad, extending from Moosic to Wilkes Barre.

Q. In other words, you did not, in preparing these maps and tables for Judge Wheaton, rely so much upon such personal examination as you could give in the two half days to the large number of collieries in the Wyoming region, or even the large number which were in reasonable distance of the Lehigh Valley Railroad, as upon your knowledge of the situation which has been de-

6701 rived from many years residence at Pottsville, and knowledge of condition in the entire anthracite coal fields. A. Both were taken into account, but if I were to give an opinion as to the construction of any line, of course I would make a separate examination of it before giving an opinion.

Q. You would not give an opinion upon two half days' notice upon the feasibility of making a connection to all colleries in the Wyoming region, would you? A. No, not at all, I wouldn't for one colliery.

6702

By Mr. Wheaton:

Q. Outside of these two half days, how much time have you spent personally on the grounds in the Wyoming region as an engineer? A. In 1897 and 1898, I personally examined all of the Lehigh Valley Coal lands, embraced in the $12,000,000 mortgage given to the E. P. Wilbur Trust Company, trustees; I have at different times examined property for, for instance, several properties in the vicinity of Pittston, and when I say I have been consulting engineer for fifteen years for one prop-
6703 erty in Plymouth, and within the last two years I went over the entire property, and when I say I was on the Lehigh Valley Railroad corps that built the bridge across the river at Pittston and Coxton yard, I have a general knowledge of the country.

Q. You have not forgotten that country in the interval, have you? A. No.

Q. Have you had that in mind, and have it in mind now, in connection with your two half days' examination? A. It was merely to supplement the knowledge
6704 that I had, merely that I went over that ground.

By Mr. Boles:

Q. Are you more familiar with the Lehigh Valley railroad than any other in that region? A. Yes, I can say that I really know more of the Lehigh Valley than any of the other railroads.

Q. Did you go over any other railroads than the Lehigh Valley for the purpose of preparing for this examination? A. No, I did not.

Q. Did you go over the Lehigh Valley? A. I did not go over the Lehigh Valley Railroad, but I have been many times over its main line. 6705

Q. I mean the branches in the coal regions? A. No, I did not go over any of the line for this purpose.

Hearing adjourned until Tuesday, July 28, 1914, at ten o'clock A. M.

6706

UNITED STATES vs. LEHIGH VALLEY RAILROAD CO.

New York, July 28, 1914.

Hearing resumed pursuant to adjournment.

APPEARANCES AS BEFORE.

Lewis A. Tompkins, recalled.

Direct Examination by Mr. Wheaton:

Q. You have already been sworn in this case? A. Yes, sir. 6707

Q. And you are the general auditor of the Lehigh Valley Coal Company? A. Yes, sir.

Q. In your testimony before given in this case you set forth the length of time that you had been in the employ of the Lehigh Valley Coal Company? A. I think so.

Q. And the different capacities in which you had served them? A. Yes.

Q. And you also testified, as I recall it, that at no time had you ever been in the employ of the Lehigh Valley Railroad Company? A. That is correct. 6708

Q. In the petition of the Government in this case at page 35, after reciting that the Lehigh Valley Coal Company entered into the sixty-five per cent. contract with certain operators tributary to the defendant, Lehigh Valley Railroad, and enumerating at least some of those operators, there is an allegation that in respect of coal purchased under these contracts, referring to the sixty-five per cent. contracts, the Lehigh Valley Coal Com-

6709 pany continued to lose money. There is a further allegation by way of argument, and then there is an illustration, taking the month of January, 1901, which is alleged to have been a typical month, and a tabulation at the bottom of page 35 of the Government's petition, and in which it is sought to set forth by a tabulated set of figures that the Lehigh Valley Coal Company lost money under the sixty-five per cent. contracts. Now, I want you to take a real typical year, say 1907, and state for this record whether it is true or not—first, be-
6710 fore you take that year, generally I want to ask you whether the allegation is true, that the Lehigh Valley Coal Company lost money under the sixty-five per cent. contracts? A. It is not true.

Q. Now, I want you to take a typical year, say 1907, and in your own way give the figures demonstrating what the results to the Lehigh Valley Coal Company were of the sixty-five per cent. contracts in that year? A. For the calendar year 1907, for the twelve months ending December, 1907, the net profit on the sixty-five per cent. coal, after charging it with every possible ex-
6711 pense, was $33,209.82.

Q. I submit to you for your examination the tabulation referred to in my prior question, and at the bottom of page 35 of the Government's petition, and I ask you to set forth, if there exists therein, the compilation of facts that I asked you for previously, that the sixty-five per cent. contracts were losing contracts for the Lehigh Valley Coal Company? A. Well, the chief trouble with this is it assumes all the coal was sold at tide-water, while only a portion of it was so sold.

6712 Q. That is actually sold at tide-water or for tide-water prices? A. Yes; assuming that was the highest price realized when in fact it is the lowest.

Q. What was the fact about that as shown by your tabulation? A. It shows we got very much better prices in other markets.

Q. And as to the ownership of coal purchased under the sixty-five per cent. contracts, how much the larger and including the smaller sizes, came to tide? A. I can only guess at it, but I should say thirty per cent. of it —thirty or forty per cent.

Q. Will you look that up accurately and see? A. Yes, 6713
sir.

Q. But in any event as I understand you, so much larger percentage of it went to the better markets than tide that the net result upon all the contracts, or for as much in the year 1907 which you have taken for an illustration, there is a profit of upwards of $33,000? A. $33,000 for that year, which I think is typical.

Q. During the entire time that you have been connected with the Lehigh Valley Coal Company, and particularly during the time that you have been general 6714
auditor of that company, do you know of a single instance in which losses made by the Lehigh Valley Coal Company were ever recouped to it by the Lehigh Valley Railroad Company? A. Not one.

Q. Did such instances ever exist? A. I never heard of any.

Q. Since the decree striking down the so-called sixty-five per cent. contracts on the 26th of May, 1913, has the Lehigh Valley Coal Company bought any coal from anybody for the purpose of reselling it? A. None whatever. 6715

Q. And since the first day of March, 1912, that being the date of the contract between the Lehigh Valley Coal Company and the Lehigh Valley Coal Sales Company, has the Lehigh Valley Coal Company sold or shipped any coal outside of the State of Pennsylvania? A. No. Every sale was at the mines. Every sale without exception.

Q. And the title passed there? A. Absolutely.

Q. And the Lehigh Valley Coal Company had nothing after that date to do with the shipping or transporting 6716
of any coal that went outside of the State of Pennsylvania? A. Nothing more.

Q. Do your books as general auditor show a single item of account of any such thing as shipments outside of the State of Pennsylvania? A. No, sir; no, sir.

Q. Now, the Government's petition in this case alleges on page 37 that much of the time it, that is, the Lehigh Valley Coal Company, has lost money. Is it not a fact that prior to the year 1903 there were years in which

6717 the Lehigh Valley Coal Company made money, and there were other years in which the Lehigh Valley Coal Company lost money? A. Yes, sir.

Q. And since 1902 what is the fact as to whether the Lehigh Valley Coal Company has made or lost money? A. Made money each year.

Q. Every year since 1902? A. Since 1902, yes, sir.

Q. Upon the same page, to wit, page 37 of the Govenment's petition in this case, the Government represents that most of the capital required in carrying on
6718 the business has been furnished by the Lehigh Valley Railroad, &c. Now, it is a fact, is it not, and admitted in the answer, that prior to 1903 whenever it required capital for the carrying on of its business it generally borrowed it from the Lehigh Valley Railroad Company? A. Yes, sir.

Q. But since 1902 I wish you to state whether it has borrowed any money from the Railroad Company, and if so whether that is in small amounts and whether that has not been all repaid? A. I do not recall any loan during the period. But if there was, it was a matter
6719 of a few dollars; it might have been something for a week or so, but I do not recall any.

Q. So that your answer would be that either there was no money borrowed by the Lehigh Valley Coal Company from the Lehigh Valley Railroad Company since 1902, or, if so, it was in small amounts which have been paid promptly? A. That is correct.

Q. Now, referring to the charge of four per cent. upon the certificates of indebtedness which have been referred to in the testimony in this case, the allegation of the
6720 Government is that that was an unfair and low and unusual rate of interest—I am not quoting the exact language, but the tenor of the charge of the Government—what have you to say now as to the fairness of that interest charge?

Mr. Machen: In which year; at what time? The rate of interest has varied a good deal in this country in the last fifteen years.

Q. On page forty-five of the Government's petition 6721
the allegation is, after referring to the new issue of bonds of $7,500,000 par value called Lehigh Valley Coal Company fifty years four per cent. debenture, that the interest rate of four per cent. paid on these certificates of indebtedness was unreasonable, considering that the loan was unsecured and the borrower a mining corporation. Now, what have you to say as to the fairness of that rate of interest? A. I think it is a fair rate of interest. It is a banker's question. A banker's problem, but I know there are many four per cent. bonds 6722
issued by corporations.

Q. The Government in this same connection also alleges that in every case—every instance—where the Lehigh Valley Coal Company has issued bonds intended to be disposed of to persons other than the Lehigh Valley Railroad and its affiliated companies, the interest has been five per cent. or higher, is that true? A. There is an issue of $1,400,000 of four per cents. outstanding now in the hands of the public.

Q. And have been since what time approximately? A. I should say 1905 or 1906. 6723

Q. On page 47 of the Government's petition there is an allegation that the Lehigh Valley Railroad has also virtually given money to the Coal Company by purchasing the stocks of the corporations owning coal properties and selling them to the Lehigh Valley Coal Company at prices much lower than those paid by the Railroad Company, and then follows a citation of certain instances, to wit, among others, the allegation is that they did this with the Connell Coal Company and the Seneca Coal Company. Now, have you made an exami- 6724
nation of the books of the Lehigh Valley Coal Company in order to ascertain the basis upon which the prices of the various stocks of coal companies sold by the Lehigh Valley Railroad Company to the Lehigh Valley Coal Company were based? A. I was informed that they were sold to the Lehigh Valley Coal Company at their book value on the Railroad Company's books.

Q. So that, taking for illustration the Connell Coal Company which by this tabulation of the Government

6725 appears to have been acquired as to its stocks by the Lehigh Valley Railroad Company in 1901, and those stocks sold to the Lehigh Valley Coal Company in 1905, to wit, after an interval of four years, at the time of the sale in 1905 it was based upon the actual book value of that stock as it stood on the books of the Lehigh Valley Railroad Company at the time of the transfer. A. So I have been informed.

Mr. Machen: You are merely speaking from information as to that?

6726 The Witness: And a statement prepared by the Railroad Company.

Q. Now, Mr. Tompkins, as a part of the contract of March 1st, 1912, between the Lehigh Valley Coal Company and the Lehigh Valley Coal Sales Company, title passed to a certain stock of coal, did it not? A. Yes.

Q. And the Government seems to have alleged in the petition in this case that the price which the Lehigh Valley Coal Sales Company paid to the Lehigh Valley Coal Company for the stock of coal was a low price. I wish
6727 you would state first whether the price paid for that stock of coal was a full, fair price for it under the circumstances? A. It was.

Q. And then I want you to go into detail now and explain so that this record will show it, what the experience of the Lehigh Valley Coal Company had been with reference to—for example, the quantity of stock coal when it was actually removed as compared with the quantity which appeared upon its books and so on? A. You mean whether the stocks at that time were ex-
6728 ceptionally large——

Q. No, I mean this: when the stock of coal—considerable quantities of stock coal were actually cleaned up if they found the coal to agree with the book quantities? A. They did not.

Q. Were they more than or less in quantity when cleaned up? A. Less, as regards large coal.

Q. And that was by reason of the degradation—it came about by reason of the degradation? A. Yes.

Q. Well, that coal was treated also for use as a sort 6729
of by-product, wasn't it? A. It had to be sold at the size it made, and it may have gone in as prepared sizes.

Q. It may have gone into the stock as prepared sizes? A. yes.

Q. And then it came out and had to be sold at the degraded size? A. Yes.

Q. And if it was broken so fine as to be unsalable it was a total loss, wasn't it? A. Practically so, yes.

Q. Now, the Lehigh Valley Coal Sales Company paid the Lehigh Valley Coal Company for its stock of coal 6730
spot cash? A. They did, in advance.

Q. They paid on the quantity of stock coal shown upon the books of the Lehigh Valley Coal Company? A. That is correct.

Q. And the Lehigh Valley Coal Sales Company just took all the risk of shortage, did it not? A. Yes, sir.

Q. And if it had not bought the coal in bulk that way, to whom and to about how many pepole would the Lehigh Valley Coal Company have been obliged to have sold that coal in order to dispose of it? A. It would have gone to thousands of customers all over the country at 6731
various prices and over a period of several months.

Q. So that the result of that transaction was a spot cash transaction? A. Spot cash.

Q. For the full amount shown on the books of the Lehigh Valley Coal Company? A. If the Lehigh Valley Coal Company had deposited the money received in advance from the Sales Company, and it had remained on deposit for say ninety days, which would have been a short time, in which to turn that stock of coal into cash it would have gotten more than its book value. 6732

Q. Now, taking the price which the Lehigh Valley Coal Sales Company paid to the Lehigh Valley Coal Company for that stock of coal, and taking into account now the chances which the Lehigh Valley Coal Sales Company took of shrinkage and shortage and loss at the dates when it came in turn to sell these coals, what would the discount have amounted to on account of receiving spot cash in that transaction? A. Why, I think two per cent. would have been very low.

6733 Q. A two per cent. discount for cash? A. Yes, sir; I should think that would be very reasonable.

Q. When it came to balance up, how did it figure out? A. About a half of one per cent. variation from the book value.

Q. So that therefore, that is the actual figure and there was an allowance not to exceed one-half of one per cent. for a spot cash transaction with all its accompanying risks? A. That is correct. And there is another thing, in the statement of purchased coal which
6734 the Government submits, they state that the selling and wastage is fifteen cents a ton. Well, on the amount of coal in stock applying fifteen cents to that, it would have made something like $50,000, whereas, we got within $8,000 of the book value.

Q. So that their estimate of wastage and so on is a very large over estimate of what actually transpired with reference to this stock coal? A. Yes, applying that wastage the Sales Company would have gotten the coal very much cheaper than they did.

6735 Q. That is, they would have been entitled to have it for much less? A. Yes.

Q. What do your books and accounts show as to the proposition or fact, if it be a fact, that the Lehigh Valley Coal Company from—we will go back, say, from 1902 down—has not or has increased its production of anthracite coal annually? A. It has.

Q. To a very marked degree? A. Yes.

Q. Have Coxe Brothers & Company, Inc. also increased its production from year to year since 1905? A. Yes, sir.

6736 Q. Now, from the year 1902——

Mr. Wheaton: I offer this statement showing the total from Coxe Brothers & Company, Inc., from 1905 to 1913, both years inclusive.

Marked **Lehigh Valley Coal Company Exhibit No. 9.**

Mr. Machen: Was that prepared by Mr. Tompkins?

Mr. Boles: Mr. Tompkins prepared it.

Q. Now, Mr. Tompkins, have you prepared a tabula- 6737
tion showing the price received for anthracite coal from 1902 down until the time it stopped selling anthracite coal except under the sales contract, 1902 to 1911, inclusive? A. I have not such a tabulation here, I have the Government's exhibit as to the price received during that period.

Q. All right; take the Government's exhibit, and state whether during that time the price of anthracite coal received by the Lehigh Valley Coal Company has increased or not, and if there has been any increase state 6738
what it is, and if there has been no increase practically in certain sizes, so state? A. This exhibit covers other sales than sales of Lehigh Valley coal.

Q. Generally speaking? A. Yes.

Q. You have reference to having a Government exhibit showing what that is? A. This is House Document No. 1442, sixty-second Congress.

Q. It is not a Government exhibit in this case, but is what? A. House Document, prepared by the Commissioner of Labor.

Q. Resuming your direct examination which was sus- 6739
pended, for the purpose of enabling you to examine into the prices of coal received by the Lehigh Valley Coal Company, during the period of 1904 to and including 1910, in order to determine what change of prices, if any, there had been. Have you now made that examination? A. Yes, sir.

Q. And what has the result of that examination shown as to change of prices? A. Shall I read it by sizes?

Q. Yes, you may read it, please, by sizes. A. The
year 1911 compared with the year 1904, lump and steam- 6740
boat, gross average realized increase 22.76 cents; broken coal decreased 15.37 cents; egg coal decreased 4.5 cents; stove coal increased .47 cents; chestnut increased 23.37 cents; pea coal increased 29.69 cents; buckwheat increased 12.72; rice and barley, combined, I have no separate figures there, increased 7.86 per cents.

Mr. Machen: Per cent. or cents?

The Witness: Cents per ton.

6741 Q. The increases generally are on chestnut and smaller sizes? A. Lump and steamboat.

Q. I mean the principal increases are on chestnut and smaller sizes? A. Yes, sir.

Q. On what account? For what reason? A. Well, chestnut coal has advanced in prices. The others are steam sizes, in competition with steam coal, and the price varies.

Q. Well, on the percentage of your sales of that first column, whatever it is? A. Lump and steamboat.

6742 Q. Take this column, on the percentage of your sales, what would be the percentage of increase in the price of those sizes based on the total sales? A. Sales of lump and steamboat are not over two per cent. of the total sales.

Direct Examination by Mr. Boles:

Q. Did the Lehigh Valley Railroad Company ever own any of the bonds known as the 5-10 year Coal Pledge Bonds? A. No, sir.

6743 Q. Who did own them? A. The Girard Trust Company. The agreement was with the Girard Trust Company, and the Railroad Company was not involved in it in any way.

Q. Was it a beneficiary under it in any way, under the agreement? A. Not at all.

Q. Did the Railroad Company advance the money to pay off those bonds? A. They loaned the money.

Q. And what did you give to represent the loan? A. Certificates of Indebtedness.

Q. Immediately? A. Well, within a short time.

6744 Q. You mean a day or two? A. Well, I would say three or four months.

Q. Three or four months? A. Yes, sir, approximately.

Q. Did you at my request make a detailed examination of the Railroad's answer to Question No. 21 in I. C. C. Docket No. 4914? A. Yes, sir.

Q. Is that answer correct according to your books? A. The last item, $2,180,000, includes $130,000 paid for the stock of the Wyoming Coal & Land Company. I

don't know why that is in there. Otherwise it is correct. 6745
The right amount is $2,050,000.

Q. You mean that your books do not show that? A. Well, that was a separate transaction. We afterwards bought that stock and paid for it with Certificates of Indebtedness.

Q. You afterwards bought it from the railroad? A. Yes, sir, but I do not know why they give it in that report. They have got it in the Lehigh Valley Railroad Loan Account. It does not belong there.

Q. Did you check up the Note attached to the an- 6746
swer? A. Yes, sir, so far as I was able to.

Q. And that is also correct with the exception you have mentioned, as to the Wyoming Coal & Land Company? A. I found no other differences, although most of my time was spent on the other sheet.

Q. Did you prepare a statement showing the items embraced by the Certificates of Indebtedness received by the Lehigh Valley Railroad Company from the Lehigh Valley Coal Company June 30th, 1905? A. Yes, sir.

Q. Is that it? A. That is it. 6747

Q. Is it correct? A. It is correct.

Mr. Boles: I offer the statement in evidence.

(Marked **Lehigh Valley Railroad Exhibit No. 89.**)

Q. Page 37 of the Government's petition in this case states that: "Most of the capital required in carrying on the business of the Lehigh Valley Coal Company has been furnished by the Lehigh Valley Railroad Company." Has the Lehigh Valley Railroad Company fur- 6748
nished to the Lehigh Valley Coal Company any capital for carrying on its business since 1902? A. Nothing.

Q. Do your books show the uses to which you put the various advances made by the Lehigh Valley Railroad Company as shown in the answer to the Question No. 21, I. C. C. Docket, No. 4914? A. Well, it is plain to see that the money went into the development of the property, and capital expenditures chiefly.

6749 Q. During all that period your company was actively engaged in mining coal? A. Yes, sir.

Q. And you were exhausting the mines? A. Yes, sir, to the extent of the mining.

Q. And in order to continue its business you had to replenish your supplies? A. We did.

Q. Have those advances all been repaid? A. They have.

Q. With interest? A. I am unable to answer that.

Q. Well, the advances which have been reimbursed by
6750 the issuance of the Certificates of Indebtedness have been repaid, with interest? A. Yes.

Mr. Machen: You don't mean legal interest, that is six per cent. interest, when you say with interest, necessarily?

The Witness: Well, the interest is shown on the record.

Mr. Boles: When you say legal, what do you mean?

Mr. Machen: I mean, he does not mean to say it is repaid with interest at six per cent.

6751 The Witness: I did not state the rate of interest.

Q. And the amounts reimbursed by the issuance of bonds have been repaid with interest? A. Well, they are interest bearing bonds.

Q. They are interest bearing bonds? A. Yes.

Q. And the interest was paid on the bonds? A. Yes, sir.

Q. As the interest accrued? A. That is correct, except
6752 as that report says.

Mr. Machen: By that report you mean the answer to the I. C. C. Question 21?

The Witness: Yes. That shows the facts.

Mr. Machen: Government's Exhibit No. 50?

The Witness: Yes.

Q. Now, have you examined the statement prepared by Mr. Morrison and which is in evidence in this case as

Lehigh Valley Railroad Company Exhibit No. 69? A. 6753
Yes, sir, I have examined it so far as I was able to.

Q. And was each of the companies mentioned thereon actively engaged in the mining of coal during the time that the stock or bonds thereof were owned by the Lehigh Valley Railroad Company, as shown on this exhibit? If not, what are the exceptions? A. Well, you are referring only to the companies which were later transferred to the Lehigh Valley Coal Company.

Q. Yes, limit it to that? A. Well, actively engaged.

Q. Actively engaged? A. Yes, sir. 6754

Q. And the stocks of certain of those companies were never transferred to the Lehigh Valley Coal Company? A. That is correct.

Q. Such, for example, as the New York and Middle Coal Field Railroad and Coal Company? A. That is correct.

Q. The Wyoming Valley Coal Company? A. That was transferred.

Q. The Packer Coal Company? A. No, sir.

Q. That was not transferred? A. No, sir.

Q. Coxe Brothers & Company, Inc.? A. No, sir. 6755

Q. The Temple Iron Company? A. No, sir.

Q. But the other companies mentioned were transferred to the Coal Company? A. Well, I could tell you the ones that were not.

Q. Well, tell me? A. Anthracite Coal & Improvement Company was not. The others reached us ultimately sometimes through another company.

Q. Were each of the issues of bonds which are mentioned in answer to Question 21, I. C. C. 4914 and also in Lehigh Valley Railroad Exhibit No. 69, which was is- 6756
sued by the Lehigh Valley Coal Company or any of the subsidiary companies of the Coal Company, issued at par? A. Can you enumerate the issues? I haven't a list of them.

Q. Well, did you ever issue any bonds at less than par?

Mr. Machen: Bonds of which company is this?

The Witness: First mortgage bonds, $12,000,000, were issued at par. We got par and interest for those. The $5,000,000 bonds were issued at par. I think there was a little discount on the 5-10 year bonds.

6757 Q. Well, they were never owned by the railroad? A. No.

Q. The 5-10 Year Coal Pledge Bonds? A. You are speaking of bonds owned by the Railroad Company?

Q. I will confine the question to the bonds which were issued to or ever owned by the Railroad Company? A. Not less than par, no.

Q. The books of the Lehigh Valley Railroad Company show that an item of "current assets" belonging to Coxe Brothers & Company at the time of the acquisition
6758 of the stock by the Railroad were certain assets which were converted into cash, which cash was put on the books of the Lehigh Valley Railroad at something over $2,000,000. Do you know what those current assets were? A. That was the surplus as of November 1st, 1905, at the time of purchase, paid over in the following June, eights months later.

Q. Well, do the books of Coxe Brothers & Company show that it retained working capital? A. This was eight months later, and they had working capital from subsequent earnings.

6759 Q. They never depleted their fund of working capital? A. It was not necessary.

Q. They maintained during that period a working capital sufficient for the purposes of carrying on their business? A. Yes, certainly.

Q. And they did actively and actually carry on their business both before November 1, 1905, and after November , 1905? A. Yes, sir.

Q. And have since continued to do so? A. Yes, sir. You understand, very little working capital was re-
6760 quired when they sold their coal at the mines.

Q. Well, they had to pay wages? A. They had to pay wages, yes, but the contract provided for advance payments on account, which would practically take care of the payrolls.

Q. Well, they had enough money for that, without looking in any way to the Lehigh Valley Railroad? A. Yes, sir. I remember once or twice when they went to the bank and borrowed money, in times of strike or

unusual conditions, but those, the bank loans, they paid 6761
off.

By Mr. Warren:

Q. Mr. Tompkins, I may have misunderstood you, but I thought you said this morning that when the defendant the Lehigh Valley Coal Company were shipping anthracite coal, engaged in merchandising, about a third of their production would come to tide; have you considered that at all since? A. That was incorrect; fifteen or twenty per cent. would be approximately correct. 6762

Q. And you are not sure it is as much as from fifteen to twenty? A. No, I would like to have time to get at the books on that.

Q. Calling your attention to Government Exhibit No. 48, at page 180 of your typewritten testimony, there is apparently a statement here of anthracite coal purchased by the Lehigh Valley Coal Company for the fiscal year ending June 30, 1912. After March 1st, 1912, whatever these figures may have in them, the 65 per cent. contracts which the Lehigh Valley Coal Company had, and which were in force, were taken over by the 6763
Sales Company, were they not? A. The coal was delivered to the Sales Company, yes, sir.

Q. And those contracts were taken over and carried out by the Sales Company? A. Yes, sir.

Q. So that the Lehigh Valley Coal Company had ceased the merchandising of coal in every respect after March 1st, 1912, isn't that right, other than some local sales in Pennsylvania? A. Was your question that the contracts were assigned to the Sales Company?

Q. No, my question was whether the Sales Company 6764
did not carry out those contracts? A. They did, yes, sir.

Q. In every respect? A. Yes, sir, as near as I know.

Q. Buying coal and paying for it at the mines? A. Yes, sir.

Q. Do you know whether these figures on Government Exhibit 48 include the purchases by the Sales Company after March 1st, 1912? A. I would say yes.

6765 Mr. Machen: The coal company bought the coal from these various persons and then turned it over at the same price to the Coal Sales Company, is that correct?

Mr. Warren: I object; that is not the fact. I will ask the witness if he knows.

Q. The 65 per cent. contracts that were in force as of March 1st, 1912, and in which the Lehigh Valley Coal Company was the vendee, or the purchaser, were carried
6766 out afterwards by the Lehigh Valley Sales Company in accordance with their contract with the Coal Company dated March 1st, 1912, were they not? A. Yes.

Q. And they purchased the coal at the breakers and shipped it where they saw fit and paid the moneys to the coal company in accordance with the basis of the contracts, and the Coal Company handed it over to the various designated parties, isn't that right? A. That is right, yes.

Q. Now, after March 1st, 1912, the only relation the coal company had with any 65 per cent. contract was
6767 that it was the intermediary through which the money, the prices for the coal purchased the previous month by the Sales Company were handed over to the vendors in those contracts? A. That is correct.

Q. Now, Mr. Tompkins, at the time of the making of the contract of March 1st, 1912, or its coming into effect at any rate, there was not only transferred to the Lehigh Valley Coal Sales Company—it having purchased the same—some certain coal that was stocked at the various places and certain coal in transit, but also a large num-
6768 ber of bills receivable or book accounts as against purchases of anthracite coal from the Lehigh Valley Coal Company before March 1st, 1912, were they not? A. They were sold to the Sales Company.

Q. They were sold to the Sales Company how? What I mean is what was the deal as to those accounts? A. Guaranteed.

Q. Was a list made up? A. Yes. Sold the outstanding accounts and they took them over as of that date and paid for them.

Q. And as they appeared on the books? A. Certainly. 6769

Q. Will you state whether there was any understanding as between the Sales Company and the Coal Company, the Sales Company having paid cash for them, as to whether the Coal Company would recoup the Sales Company in case of its failure to collect from these various persons the amounts appearing against them on the books of the Coal Company? A. The accounts sold them were guaranteed.

Q. By whom? A. By the Lehigh Valley Coal Company, to reimburse them for any that were not collectible. 6770

Q. Now, as a matter of fact in some instances was there an adjustment several months perhaps after March 1st, 1912, the Sales Company having satisfied you that they were unable to collect their accounts? A. There were.

Q. Did it amount to any very considerable sum, or was it a mere matter of small matters? A. Well, I would say a considerable sum.

Q. These accounts were accounts of customers of Lehigh Valley Coal Company prior to March 1st, 1912, of 6771 course, the customers being where? A. Everywhere.

Q. What do you mean by everywhere? A. In all the sales districts.

Q. All over the country practically speaking? A. Wherever the Lehigh Valley Coal Company formerly sold coal.

Q. Which covered the Middle States and Canada and Eastern States, didn't it, broadly? A. Yes, Massachusetts or Maine I would say.

Q. After March 1st, 1912, the deals as between the 6772 Coal Company and the Sales Company resulted in a situation that the Sales Company acquired first all bills receivable by the Coal Company, all the Coal Company owned in storage or in transit, all of its offices that it rented for its agencies, etc., all of its storage facilities, plants and coal properties of every kind, isn't that true? A. Coal properties connected with the sales.

Q. Sure, I mean connected with the sales in any way, the merchandising of coal? A. That is correct.

6773 Q. So that as of March 1st, 1912, the Lehigh Valley Coal Company was cleaned out clear of any association or relation with the merchandising of anthracite coal? A. Absolutely.

Q. From that time to the present what is the fact as to its having any association or relation with the merchandising of anthracite coal? A. It has not sold a pound of coal except at the mines.

Q. They were always in the State of Pennsylvania? A. Yes, sir.

6774 Q. The mines were always in the State of Pennsylvania? A. Yes, sir.

Q. Do you know whether the Lehigh Valley Coal Company paid a rental to the Lehigh Valley Coal Sales Company for a few offices it occupied for a short time after March 1st, 1912, in the building known as No. 90 West Street? A. It did.

Q. Was the rental $214 a month as stated by Mr. Burton, or don't you remember? A. That sounds right, but I would like to verify it; it is approximiately right, I am sure.

6775 Q. These purchases of—what do you call them—bills receivable? A. Accounts receivable.

Q. Accounts receivable aggregated over $6,000,000, did they not? A. I think they did. I can verify that.

Q. Isn't it a part of your duty to see that the Sales Company carries out this contract with the Coal Company in the matter of the payment for coal it purchases each month at the mines of the Coal Company? A. Yes, sir.

Q. And do you observe those matters so as to be able
6776 to testify whether the Sales Company has paid in accordance with the contract of March 1st, 1912, for all the coal it purchased from your company in accordance with that contract? A. Yes, sir.

Q. It has? A. Yes, sir.

Direct Examination by Mr. Wheaton:

Q. Let me ask you this question. Do you recall about when the Lehigh Valley Coal Company began to sell Coxe Brothers & Co., Inc. coal? A. The date of the 65 per cent. contract?

Q. Whenever they first began to sell the coal? A. 6777
April 1st, 1906.

Q. That arrangement was mutually advantageous in that it did away with double agencies and so on, didn't it? A. It did away with duplication of agencies.

Q. It was both convenient and financially advantageous for both? A. Yes; very carefully considered before it was done.

By Mr. Warren:

Q. Having turned over your merchandising of an- 6778
thracite coal and handling of anthracite coal and given up all your agencies in the various states where you did business—it was necessary for you, was it not, after March 1st, 1912, to provide somebody to carry out the Markle contract? A. Naturally.

Cross Examination by Mr. Gordon:

Q. Mr. Tompkins, as auditor of the Lehigh Valley Coal Company, have you in the past audited freight bills as well as the other disbursements by the company? A. 6779
Audited anything where we pay out money, yes, sir.

Q. Such freight bills as the Lehigh Valley Coal Company may have to pay you audited also, I suppose? A. I don't know what you refer to. I know all freight that was paid to the railroad company by the Coal Company was carefully audited.

Q. But is it not a part of your duty as auditor of the Lehigh Valley Coal Company to audit the payment, for instance for coal as has hitherto been shown transported by the Lehigh Valley Railroad Company from certain collieries which do not have adjacent breakers to the 6780
breakers located at other collieries? A. Yes.

Q. And all such freight bills would be audited by you? A. Yes.

Q. Is it not a fact also that the Lehigh Valley Railroad transports for the Lehigh Valley Coal Company, even today a considerable amount of in-bound as distinguished from outbound shipments in interstate commerce; for instance, timber from Georgia for the timbering of the mines? A. Shipments routed via the

6781 Lehigh Valley Railroad, yes, because most of our mines are located on the Lehigh Valley Railroad.

Q. Shipments of supplies intended to be used in the mining of the coal of the Lehigh Valley Coal Company? A. Yes, sir.

Q. Amongst such shipments was the timber, was there not? A. Yes, sir.

Q. And mules? A. Mules are usually bought locally, they would not be transported as a rule. I don't recall any.

6782 Q. Hay and feed for the mules would come from western markets? A. Various markets.

Q. Some from western markets? A. Yes.

Q. Outside of Pennsylvania? A. Yes, I think so.

Q. Machinery would come from New York and Buffalo and——A. Everywhere.

Q. Rope and powder in interstate commerce? A. We buy supplies everywhere.

Q. And general supplies of which a considerable amount was bought for mining purposes from markets in other States to the Lehigh Valley Coal Company's

6783 collieries via the Lehigh Valley Railroad? A. They would come from wherever the purchase was made.

Q. Such purchases are made in other states than Pennsylvania, are they not? A. Yes.

Q. I show you Government's Exhibit No. 107, being an extract from the annual report of the Lehigh Valley Railroad Company for the fiscal year under date November 30, 1894, page 20, and ask you to read therefrom the amount stated as gain per ton on coal mined by the Lehigh Valley Coal Company and the loss per ton on coal

6784 puchased by the Lehigh Valley Coal Company? A. Just read what is on this page.

Q. You can pick out the gain in cents per ton on coal sold by the Lehigh Valley Coal Company which was mined by the Lehigh Valley Coal Company and the amount in cents per ton on the coal sold by the Lehigh Valley Coal Company which was purchased by the Lehigh Valley Coal Company? A. This report reads gain per ton from company's coal 17.57 cents; also loss per ton on purchased coal 11.76 cents.

Q. And what was the gain and loss respectively upon 6785
the mined coal and purchased coal in dollars? A. The figures here show a gain on the Company's coal of $357,337.49; they show loss on purchased coal $366,-176.69.

Q. What is the net loss? A. The net loss shown here $8,839.20.

Q. The coal referred to as purchased coal in that statement was purchased under the old 60 per cent. contracts, was it not? A. I don't know.

Q. Do you not know that the Lehigh Valley Coal Com- 6786
pany at that time did have 60 per cent. contracts in existance for the purchase of coal? A. I have heard there were. I never had anything to do with them. That was before my time.

Q. Haven't you ever as auditor of the company had occasion to refer to the books of the company before that period? A. Not in that connection; I never have.

Q. Haven't you had occasion to refer to the books of the company involving the purchases of coal during those years? A. No, I don't recall it.

Q. From 1894 to 1901? A. No, sir; I don't recall any. 6787
I never had any occasion to do that.

Q. How long have you been in the audiitng department of the Lehigh Valley Coal Company? A. Since 1903.

Q. As auditor of the Lehigh Valley Coal Company are you familiar with the facts which were testified to recently that up to the coming into effect of 65 per cent. contract, the practice of the Lehigh Valley Railroad was to adjust the freight rates to tidewater on a 40 per cent. basis, that is, so that the freight rates to tide- 6788
water were ultimately 40 per cent. of the general average of tidewater prices of coal? A. I have heard that was the practice. I have had no personal experience, no occasion to take it up.

Q. In your memorandum, from which you testified in response to Judge Wheaton's questions, that during the year 1907 the Lehigh Valley Coal Company on its sales of purchased coal from the Wyoming region made a profit of $33,209.82; can you tell us how large the total

6789 receipts the Lehigh Valley Coal Company on which those profits were realized were? A. I could after I have seen it. I haven't got it in my head. It could be developed from that statement by extending the tons and the money.

Q. Could you state it approximately? A. No, I could not, Mr. Gordon. I can get the exact figures.

Q. Will you do so? A. If you wish it I will have it to-morrow.

Q. It appears from your own memorandum, does it
6790 not, that the Lehigh Valley Coal Company lost considerable sums of money during certain months of that year? A. Certain sizes and certain months; that is inevitable.

Q. It appears, does it not, that upon the total transactions for the month of March, 1907, the losses were $5,597.44? A. If that is what the statement shows that is correct.

Q. And it lost money on all sizes that month except stove coal, did it not? A. That is correct.

Q. And on stove coal it netted $144.03 gain? A. Yes.

6791 Q. The month of May, 1907, what was the loss on the total sales? A. $2,384.32.

Q. And the month of June what was the total loss? A. $2,373.70.

Q. And July? A. $985.19.

Q. In the month of August, 1907, the gains were only $90.78? A. $90.78.

Q. Upon the rice and barley there were losses every month in the year, were there not? A. That is correct. We had to take that along with the rest.

6792 Q. And on pea coal there were losses in every month but November, 1907, were there not? A. That is correct.

Q. Now, referring to the column headed "Cost per ton at mine," how was that figure attained? A. Actual cash paid for the coal.

Q. How was that calculated? A. That is 65 per cent. coal; only a different percentage on small sizes.

Q. The usual 65 per cent. basis? A. The usual 65, yes.

Q. Take the next column, the net realized per ton at the mines, how was that calculated? A. That is the price the coal netted at the mines after every expense after leaving the mines was deducted. 6793

Q. You took the price at which it was actually sold at New York harbor or wherever it may have been sold and deducted that actual expense connected with it? A. Every expense of every character.

Q. Will you please enumerate the items which you deducted? A. The chief items are the expense of selling, handling and wastage.

Q. What did you use as the expense of selling, what figure? A. I could not tell you that now. It was actual expenditures for that month which cover salaries, rent and traveling expenses and stationery supplies, telephone, everything of that character. 6794

Q. How did you estimate the actual expenditures of that month? A. We did not estimate it, it was an actual figure.

Q. How did you figure out what represented the total selling expenses? A. Of all the business of the company and divided by the number of tons of coal. 6795

Q. Sold? A. That is right.

Q. How much per ton did it figure out? A. I haven't that figure here.

Q. Will you give it to us to-morrow morning? A. If I have it I will. We do not always preserve all of those working papers. It averaged 4 to 5 cents. That was an average figure.

Q. What did you include in the item selling expenses which you divided by the total number of tons of coal sold? A. What class of expenditure? 6796

Q. Yes, what items of expenditures? A. Salaries, rentals.

Q. Rentals of what? A. Offices.

Q. What offices? A. Sales offices, every expense of the sales organization.

Q. What other expenses are there? A. Traveling expenses, various office expenses, stationery, printing, supplies, telephone, miscellaneous.

6797 Q. Did you include in the selling expenses the cost of handling, or was that a separate item? A. Handling was a separate matter; that would mean the operation of storage plants and yards and stocking plants.

Q. How large an item was the cost of handling? A. I couldn't say without reference.

Q. Will you find out? A. Yes.

Q. What did that include? A. That would be the operation of the storage plant, which would include rentals and repairs, salaries, and wages, everything
6798 chargeable to the operation.

Q. It is an expensive matter, is it not, to put coal into storage and take it out again? A. It certainly is.

Q. So that that would be a very substantial item; it would be a large sum? A. And of course there is a large tonnage for the divisor.

Q. The item of wastage, how large is that? A. That averaged about three cents on all sales, averaging all the sales.

Q. How large a percentage on the cost of the coal would that be? A. I could not tell you without cal-
6799 culating. Approximately three cents a ton. I would have to know the cost of the coal.

Q. The cost of the coal is definite? A. Well, on some sizes there would be about one per cent.; on others it would be more than that.

Q. Where does this wastage occur? A. In the handling, breaking down of the large sizes into smaller sizes.

Q. Isn't there a very appreciable depreciation in coal caused by breakage at trans-shipment points, for in-
6800 stance, at Perth Amboy, where the coal has to be handled in and out of the storage plants, wherever the coal is handled? A. There is a loss of that sort and it varies according to the equipment. I am taking an average figure on all of our sales of three cents.

Q. And you are testifying that the depreciation caused by breakage and handling in transit is less than half of one per cent. of the original cost? A. No, I don't say that.

Mr. Wheaton: He said it amounted to one per cent. on some sizes and more on others.

A. (Continued.) I want to explain that that is arrived 6801
at by taking the average—the average I spoke of is the average of all sales, every ton of coal we sell, whether that went into storage or not. That was the way it was done and we assumed that we got accurate figures at the end of the period and assumed that for every ton sold it was the average amount of degradation, or about 3 cents per ton. No two storage plants were alike as to the actual degradation, but averaging it all up on all sales it is approximately that figure, or it was.

Q. Did you figure your deductions for the net sum 6802
realized per ton at the mines in your coal lost or stolen in transit? A. I don't know; that is a very small figure; I could not say whether in this figure it is in or not.

Q. Did it include losses from bad debts? A. It did.

Q. How did you figure in the loss from bad debts? A. It is the easiest thing in the world to figure you are out the money, and it is charged in as part of the cost. It is part of this figure.

Q. What deduction to get at it, the cost of selling? A. No, just the deduction of the difference between the 6803
gross realized and the net realized. We cut out every character of expense.

Q. You made a definite item of losses and added those? A. It was at that time; I don't know whether the figures have been preserved or not, but it was at that time; there was an exact figure.

Q. Did you deduct a proportionate share of the general overhead expenses? A. We certainly did.

Q. Under what item would that appear? A. That would be under general expenses at that time.

Q. Did you yourself make this computation or is this 6804
a computation which you found in the books of the company and accepted? A. It was made under my direction by competent men. I personally cannot do all of this detail work. The statistics are compiled and summaries kept. We don't keep all the underlying documents or we would have to hire a ten-story building for storage if we did.

Q. This was a computation made sometime ago, but not recently? A. At the time.

6805 Mr. Machen: Made in 1907?

The Witness: Yes, in 1907. That was a month or two following the transaction.

Q. Have you got this for the other years from the time the 65 per cent. contracts went into effect to date? A. I am not sure that I have the earlier years; I would have most of them.

Q. Is it not a fact that you kept accounts of your purchased coal and your mined coal in such manner that you
6806 could tell whether you made a loss or profit upon the purchased coal? A. The purchased coal went right in with the mined coal.

Q. But did you not keep a separate computation such as the one you have here offered? A. No; this was not regularly kept. This was compiled for your purpose, compiled to meet this statement of yours.

Q. I thought you said that this was a statement which you had prepared by your office force sometime ago and not recently? A. These figures are taken from the summaries kept of purchases and sales.

6807 Q. Have you similar summaries, similar to the ones from which you derived this statement for the other years since the 65 per cent. contracts went into effect? A. I should say I have, unless it would be for the earlier years, 1901, 1902 and 1903. I could not say off hand whether I would have those or not. I would have every year subsequent.

Q. Will you look and see if you have those earlier years? A. Yes.

Q. And tell us to-morrow morning? A. Yes.

6808 Q. How large a current account for freight bills did you have with the Lehigh Valley Railroad Company during the year 1907? A. Actual figures do you want me to give you?

Q. Could you give an approximate figure which would be reasonably accurate? A. I should say from $900,000 to $1,000,000 a month.

Q. How large would the balance account average at any one time during the year? A. According to the ledger account you see, as these things came along

they were checked up and vouchers were passed to the 6809
treasurer; they would not stick out in my account.

Q. You would not know when the bills were paid? A. I could ascertain, but it was out of my hands, and I paid no attention to it. I audited the accounts and passed the vouchers to the treasurer and it would not stand out in any ledger accounts.

Q. Was any interest paid in 1907 on the balance of account for freight bills? A. I don't know.

Q. Don't you have charge of payments and disbursements? A. I could ascertain; I cannot tell you from 6810
memory. I think it is very unlikely that they were, but I would not go on record until I investigated it.

Q. Will you ascertain it before to-morrow? A. I could not do it that quickly, because the records for that period are stored 150 miles away from here. The vouchers I could get in two or three days. I think it is unlikely that there was any interest paid on those freight bills.

Q. In the getting at your figure, net profit realized on coal purchased at the mines it was necessary, was it not, for you to figure that from the amounts actually 6811
realized at the market? A. Yes.

Q. How much did you deduct for freight? A. I could not say the actual amount paid, whatever it was. Some coal carried none, some fifty cents a ton and some $3.50 a ton, but that was always kept in a separate column and excluded absolutely from our assets. If we paid freight we charged it up as an asset; when the coal was sold the account was credited with freight from analysis of the sales—credited up the exact rate paid.

Q. Mr. Tompkins, you spoke of a $1,400,000 bond issue 6812
outstanding in the hands of the public at 4 per cent.; is it not a fact that that $1,400,000 of bonds was the issue which was reduced from 5 per cent. to 4 per cent.? A. Yes.

Q. And was sold to the public at 95? A. I don't know at what price it was sold.

Q. I want to call your attention to certain other bond issues by the Lehigh Valley Coal Company in the hands of the public—the Lehigh Coal Company's 5-10 year

6813 gold pledge bonds bear what rate of interest? A. Five per cent.

Q. And how large an issue was there? A. $2,000,000.

Q. Lehigh Valley Coal Company Snow Shoe bonds bore interest at what per cent.? A. Five I think; they are retired.

Q. How large an issue was that? A. I think $500,000, but I will have to verify that.

Q. Those were sold to the public? A. Yes.

Q. The Lentz Purchase bonds, what rate of interest

6814 did they bear? A. Five per cent.

Q. And they were issued by the Lehigh Valley Coal Company to the public? A. They were purchase bonds, given to purchase property.

Q. To the vendors of the property? A. Correct.

Q. How large an issue? A. My recollection is $1,000,000.

Q. That was in 1911, was it not? A. About that time.

Q. The Everhart Purchase Bonds, was that another bond given to the vendors of the property? A. Yes.

Q. And what interest did that bear? A. Five per

6815 cent. payable when the bonds were payable.

Q. How large an issue was that? A. I think $300,000, but I will have to verify that.

Cross-Examination by Mr. Machen:

Q. Mr. Tompkins I understand you to say that you concede that if in the year 1907, all the purchased coal, that is all purchases under the 65 per cent. contract, had been sold at tide water prices then the Coal Company would have lost money as shown in the Government ex-

6816 hibit? A. Also if they had given it away.

Q. Yes, but you answer my question, that that would be so if that had taken place? A. I haven't made any such computation. I would have to try that out.

Q. You have not disputed the Government's figures as to the coal sold at tide water, of which there was some?

Mr. Warren: I object to that question; he has not disputed anybody's figures.

Q. Some coal was sold at the tide water prices, wasn't 6817
it, by the Lehigh Valley Coal Company in the year 1907? A. Yes.

Q. And as to that coal the proper way to do would be to take the freight to tide water f. o. b. to Perth Amboy plus the amount of wastage and the cost of handling and deducting the aggregate from the total price received, and then the difference between that and the price paid for the coal at the mines would be the loss upon the transaction, wouldn't it? A. A coal company has never been organized that made money on every ton 6818
of coal.

Q. I understand that, Mr. Tompkins, but I am asking you whether you have any flaw to pick in that method? A. The price of the coal plus the freight, plus the wastage and plus the selling?

Q. Yes. A. Deduct that from the prices realized.

Q. The freight, wastage, cost of selling to be deducted from the amount the coal sold for? A. Yes, that would show you.

Q. Now, that same method could, if you had figured that, be applied at every point at which coal was sold, 6819
couldn't it, for instance, at Buffalo or Ithaca or Allentown or any other place at which the coal was sold, if you had the figures as to the amount realized by the Coal Company—the amount received by the Coal Company? A. The difference between what you receive and what you pay for the coal is your loss or gain, if that is what you mean?

Q. Yes. Now, you have not kept these figures as I understand you to apply that same principle to other points than tide water, is that so? A. I have. I cer- 6820
tainly have. I have them in different groups. I haven't it for every place coal was sold, but I have it in certain ones you might say.

Q. But I understood you to say you did not have the basic figure as to the amount paid for coal? A. I would only have them in totals. I could not segregate them or apply it to any class of sales. As I said before, it don't enter into our sales statistics in any way. If we paid $100,000 freight on coal we would charge that to the

6821 freight account; then when the coal was sold if the coal sold for $5.00 and we would pay $2.00 freight the sales sheet would show $3.00 coal, $2.00 freight, total $5.00. Now, that $2.00 would be a credit to the freight account and never go into the sales statistics at all.

Q. In other words, you would treat as the amount received for the coal the amount actually received less the amount paid for freight? A. Yes.

Q. So that you haven't got the amount paid for the freight in your books at all? A. Only in total amounts,
6822 and not the freight on any particular transaction.

Q. If you haven't got the figures at hand which would enable us to take any particular points other than tide water, as I say, Allentown or Buffalo or Ithaca or any other point and test the application of the 65 per cent. contracts in the same way that the Government exhibit has undertaken to do at tide water; that is to say, take the amount actually received, gross amount received at those particular points for the coal, and subtract from it the amount of freight from the mines to that point and the cost to sell it? A. You must remember we do
6823 not pay freight on every car of coal. Some is sold freight collect, some freight prepaid, and, therefore, it would be impossible. For every car of coal carried over such a list would have to be kept.

Q. But the only explanation you have given of the fact that your table shows upon the whole a better result on the 65 per cent. contracts than the Government table is, that the Government table is applicable only to coal sold at tide water rates. A great deal of coal was sold at other points where better prices were realized? A. The
6824 Government is presuming that all the coal was sold at tide water.

Q. And the coal which was not sold at tide water, but sold at other points, realized a price sufficiently high to enable the Company to pay the freight to those points, plus the wastage in transit, plus the cost of handling, and yet receive a net price greater than the 65 per cent. of the tide water price which it had paid, is that correct? A. I don't see where the freight comes into it. We buy the coal at the mines and all of our statistics are what we got at the mines.

Q. The freight enters into it a very great deal into it 6825
when the Government contends that the whole object of the 65 per cent. contract is a rebate.

Mr. Warren: We object to that.

Mr. Wheaton: I object to it going on the record.

Mr. Warren: There is no such allegation in the bill, and there is no such averment that the Government has ever made in any case I was ever in, the Government being the counsel for the Department of Justice. 6826

Q. Government Exhibit No. 38 which was offered in evidence in connection with your former testimony, being the income account of the Coal Company for the years, among other years, for the year 1907, contains a basic item of $32,694,015 for gross anthracite sales from which freight charges are deducted, and we have the gross receipts of anthracite of $21,702,756, and from that you deduct the selling expense, etc., and then we have the net figures. Now, you cannot carry out that same principle with reference to these 65 per cent. contracts so far as they relate to points where coal was sold other than at tide water, can you? A. No. 6827

Q. You were asked by Mr. Wheaton on direct examination as to a fair rate of interest in the year 1904; did I understand you correctly that you are not prepared to testify to that because it was a banker's question? A. The record would show, I think, that is correct.

Q. You have testified that the Coal Company sold its stocked coal at the book value. Of course, if it had continued in business and sold that coal to dealers it would 6828
have realized necessarily a sum in excess of the book value, wouldn't it? A. Not necessarily. In the face of a declining market. The price was due to drop fifty cents within a month.

Q. But the Coal Company, if it had continued its business and was to realize a profit it would have been obliged to sell that coal at more than its book value, wouldn't it? A. To realize a profit?

6829 Q. Yes. A. Certainly it would have to get more than it paid for it.

Q. And would have expected to do so, wouldn't it? A. It expected lots of things that it never realized. For instance, it is an unusual thing for them to have a profitable March or April.

Q. Because they intend to continue in business, and, therefore, they are prepared to sell that coal rather than to keep it all summer, isn't that so?

Mr. Warren: Objected to as purely argumenta-
6830 tive and improper.

A. The Coal Company is naturally bound to take care of its customers. That is all I can say to that.

Q. When the Coal Company purchases supplies, such as timber, mules, hay, etc., which have to be transported from other States to the mines, does the Lehigh Valley Railroad Company give the Coal Company any preference in respect to the payment of freight upon those shipments, or does the Coal Company pay as any other
6831 shipper does? A. It pays absolutely according to the tariff rates.

Q. And no preferences are given to it? A. Absolutely none. We get the hot end of everything.

Q. If the Coal Company buys, we will say, a carload of hay in Ohio, or wherever the hay comes from, which is to be shipped to the mines in Pennsylvania, does the Railroad Company pay the vendor, the person who sold that hay to the Coal Company the purchase price or does the Coal Company pay that independently? A. The Railroad don't pay the Coal Company's bill, but
6832 the Coal Company pays the shipper itself, of course.

Q. And the Railroad does not collect the purchase price? A. It does not enter into that at all. It is freight as far as they are interested. The railroad company collects the freight and has nothing whatever to do with the commodity.

By Mr. Wheaton:

Q. I just want to ask you this: Mr. Machen has asked you whether you carried out with reference to the coal

purchased under the 65 per cent. contract the same principle which you carried out in the income account, and you said no; but I understand that you have carried out the same principle as to the total amount of coal sold but not with reference to the items, to the detailed items? A. That is what I meant to say; that would be the total amount. We have the total, but it is not separated or segregated against any particular sale. We know how much we paid out and how much we got back. 6833

Q. But the principle upon which you have ascertained the net profit and gain is just the same in both cases, isn't it? A. Certainly; we exclude the freight everywhere. 6834

Q. Now, you were asked as to that table, whether you had any other criticism to make of it other than certain features which the Government called to your attention, and I ask you whether you have any information as to the figure of 10 cents as to the approximate expense of selling? A. Well, as to that, that is higher than the selling cost used to be.

Q. And I ask you whether you have any information as to the figure of five cents as to approximate wastage? A. Well, 3 or 3½ cents would be closer to our figures. 6835

Q. Your figures are based on actual experience? A. Absolutely.

Q. And you are comparing with figures made up by lawyers in this bill? A. Presumably.

Q. What of the figure here about average f. o. b. price received at Perth Amboy by the Lehigh Valley Coal Company, $4.36. Did you check that, taking the month of January, 1901? A. I did not. They set that as a figure, and those are prices known to anybody that wants to ascertain them. 6836

Q. Do you know whether it is correct? A. I have not figured it. I can find out. That is a long time ago.

Q. Well, then the average price would depend on the tonnage sold, wouldn't it? A. No, sir.

Q. I would like to know why. A. The average price?

Q. Depends on the amount of tonnage sold, doesn't it? A. Well, the money goes up with the tons.

6837 Q. Well, the average price per ton varies with the amount of tons sold, doesn't it, unless every ton sells for exactly the same price? A. Oh, yes, certainly; you have got to consider all.

Q. Did you furnish any figures to anybody as to the number of tons you sold in January, 1901, at Perth Amboy? A. No.

Q. And as to the price which you got for each ton? A. No.

Q. Now, this petition says that the table only in-
6838 cludes the stove size. If you wanted to figure your profits at Perth Amboy you would have to take all sizes, wouldn't you? A. Yes, certainly would.

Q. Are there months when you sell other sizes and do not sell any stove sizes? A. I would not say that, but the amount fluctuates greatly.

Q. The amount of stove sizes as compared with other sizes varies from month to month, doesn't it? A. Naturally.

Q. And were there some months when the amounts of other sizes, far exceeded the stove sizes in the way of
6839 sales? A. I would say yes, but I would have to check this up.

Q. Don't you have to plead with some of your old customers to take the stove sizes? A. I was not selling, but I know stocks accumulated, if that is what you mean, stocks of coal.

Q. Now, did you ever furnish to anybody the figure of $2.88, as the cost price of coal in January, 1901, or as the cost price of coal which the Lehigh Valley Coal Company sold in January, 1901? A. No.

6840 Q. Well, is that figure correct? A. I don't know.

Q. You don't know anything about it? A. I don't know anything about it; never had occasion to look into it.

Q. Do your figures, as to Perth Amboy sales for January, 1901, differentiate between coal sent to Perth Amboy f. o. b. and coal sent to Perth Amboy for local delivery or for delivery there to connecting lines, or for any other purpose? A. I don't know.

Re-cross Examination by Mr. Machen: 6841

Q. Stove coal does realize, as a rule, the highest price of all sizes of anthracite coal, doesn't it ?

Mr. Warren: I object to that unless the witness is shown to have some knowledge of that.

Mr. Machen: You put him on as an expert to testify to the prices of coal.

Mr. Warren: I did?

Mr. Gordon: Judge Wheaton did.

Mr. Warren: He says he doesn't know, anyway. 6842

The Witness: I don't think so.

Q. I would be obliged to you if you will verify from your records the price per ton paid by the Lehigh Valley Coal Company under the 65 per cent. contracts, those figures as they have been questioned on the table in the bill. A. In 1901, you are referring to?

Q. January, 1901; that is to say, taking the average f. o. b. prices at New York Harbor in the month of December, 1900. 6843

Mr. Boles: Your table doesn't say New York Harbor; it says Perth Amboy.

Mr. Machen: The price paid under the 65 per cent. contracts is the general average of all prices paid at New York Harbor, isn't that so?

Mr. Boles: I don't know a thing about it, except you said we were rebating, and I got interested.

Mr. Wheaton: I offer the statement in evidence. 6844

Marked **Lehigh Valley Coal Company Exhibit No. 10.**

By Mr. Machen:

Q. You said you are not aware of the fact that stove coal, as a rule, commands, of all the sizes of coal, the highest price. A. Are you speaking of the present time or the past, or what period?

6845 Q. Well, in 1901 and at the present time.

Mr. Warren: I object to his being asked any question as to the price of stove at the present time, until he has shown some familiarity with it.

Mr. Machen: This is cross-examination of an expert produced by the other side.

The Witness: It is not the highest circular price at present.

Q. It is very near it, isn't it? A. Well, it is near it.
6846 The three highest are, egg, stove and nut. Stove is not the highest of the three.

Q. Which is, chestnut? Which is the highest at the present time? A. The highest price?

Q. Yes. A. I don't know.

Q. According to the table which has been offered in evidence and is marked Lehigh Valley Coal Company's Exhibit No. 10, it appears that the net per ton realized by the coal company during seven of the twelve months, in 1907, from stove coal was the highest realized by it
6847 upon any size of coal, isn't that so? A. Those are net realized after all expenses, not the gross realized.

Q. Well, then, the cost per ton under the 65 Per Cent. Contracts, shows 65 per cent. of the general average price received at New York Harbor for all coal for those various prepared sizes sold there? A. Yes.

Q. Isn't it a fact that the cost per ton under these 65 Per Cent. Contracts for stove coal was greater than for any other size of coal during every month of the year 1907? A. The price paid for stove coal, on the 65 Per Cent. Contracts during 1907, was the highest of
6848 any.

Re-Re-Direct Examination by Mr. Boles:

Q. What was the difference, referring to this Coal Company's Exhibit No. 10, which appears to have a bearing upon this charge of rebating, what was the difference between the egg and stove prices in January? A. Fifty-five one-hundredths of a cent.

Q. And between stove and chestnut? A. Five one thousandths of a cent.

Q. Well, now, just looking through the exhibits, isn't 6849
it a fact that in every case the difference between egg and stove and between chestnut and stove, in the way of the price at the mines, and the cost at the mines, is less than a mill per ton in every case? A. That is approximately correct.

Q. Now, isn't it a fact that in every month you bought more chestnut than you did stove? A. Yes, as per this statement.

Q. And you bought approximately as much egg coal in every month as you did stove, and in some cases 6850
more? A. One month more and other months about the same.

Q. What is the figure of the grand total which you have shown there, what does that figure mean, $33,209.82? A. The net profit on the sale of their coal.

Q. That is what your books show, excluding all theories? A. Well, there is some theory there.

Q. What is the theory? A. Coal is not actually sold the month in which you get it. These were the prices prevailing in that month for the coal that we did sell. It cannot be worked out in any other way. 6851

Charles H. Jacobs, a witness called on behalf of the Lehigh Valley Railroad Company, being first duly sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. Mr. Jacobs, what is your business? A. Wholesale coal.

Q. What firm? A. Whitney & Kemmerer. 6852

Q. Are you a member of the firm? A. I am, sir.

Q. And are you a large shipper of anthracite on the Lehigh Valley road? A. Considered so, yes, sir.

Q. About how much tonnage in a year? A. I should say about 5 or 600,000, on the Lehigh Valley.

Q. Moving to various points in the East and West? A. Many points, western points, New England points, and to tide.

6853 Q. Do you ship over other railroads? A. Yes, sir.

Q. What is your total tonnage a year on all lines? A. Oh, I would say several million; I don't think I should specify exact tonnage.

Q. Several million tons a year? A. Yes, sir.

Q. Are you in active competition in the sale of coal in New York City? A. We are.

Q. And adjacent cities? A. We are in competition in every market that anthracite is distributed, and all tide points here in New York.

6854 Q. Do you compete with the Lehigh Valley Coal Sales Company? A. We have competed with the Lehigh Valley Coal Sales Company at New York tide ports and along the line, and in New England territory as well as Buffalo. Wherever they go, we go.

Q. Where does your coal originate? A. On the Lehigh Valley?

Q. On the Lehigh Valley. A. In the Wyoming regions as well as in the Lehigh region.

Q. You buy from various companies? A. We buy from various collieries, individual operators.

6855

Mr. Machen: You don't own any mines, yourself.

The Witness: No, sir.

Q. Do you sell to Marcus E. Good at Allentown? A. Marcus E. Good, I don't remember that name. There is M. A. Kooter at Allentown, Koehler Brothers at Allentown, and a number of the dealers at Allentown that we sell to, and various manufacturing plants in Allentown that we sell to.

6856 Q. Will you look over the list of names appearing on pages 52 and 53 of the petition, particularly the parties named as located at Allentown, and tell me to whom you sell in that list? A. We have sold Butz & Company, E. C. Smoyer, Koch Brothers, Rathbon, Lehr & Richards.

Q. Would you mind just looking down that list on page 53, and see if offhand you can tell us any other customers whose names you see there? A. There is Apgar, Bound Brook; J. C. W. Rankin, Cranford; and a large number of New York customers are here, which are

taken care of by our New York Office. I could not 6857
specify those. Peckham & Morgan at Cortland, we sell him; D. L. Miller, West Elizabeth; Shimer & Sons Co., at Freemansburg; Wertheim Coal & Coke Company, Jersey City; D. S. Fox, Lansdowne; C. E. Kelly, Newmarket; Newmarket Grain & Coal; James Fleming, Phillipsburg; Bittner, Fitzpatrick & Co., Picton; Ten Eyck & Harris, South Plainfield.

Q. There may possibly be some others whose—— A. Yes, the names that I cannot bring to mind just now.

Q. This is the first time you have seen this list, is it 6858
not? A. This is the first time.

Q. And you are just answering from your offhand recollection of your customers' names? A. Yes, sir.

Q. About how many customers do you have on your books? A. Between three thousand and four thousand.

Q. How long have you been in the coal business? A. Since 1882.

Q. Were you in competition with the Lehigh Valley Coal Company when they were engaged in selling anthracite at line points? A. We have always been in competition with the Lehigh Valley Coal Company. 6859

Q. And since March 1, 1912, with the Lehigh Valley Coal Sales Company? A. Yes.

Q. How long have you been a shipper over the Lehigh Valley Railroad—a shipper of anthracite over the Lehigh Valley Railroad? A. I went in the firm in 1882. Prior to that time they were shipping over the Lehigh Valley. I imagine ever since they have been in the business. The firm was organized in 1870.

Q. The firm of Whitney & Kemmerer? A. Yes, sir.

Q. Have you ever had any occasion to complain of any 6860
unfair or discriminatory treatment given to other shippers of coal as against you, that is in favor of other shippers to your detriment? A. My experience in the past, our relations with the Lehigh Valley have been exceedingly pleasant. I have had less trouble and contention with the Lehigh Valley dealings, that is, the Lehigh Valley Railroad, I think than any other railroad that we operate on.

Q. Do you know of any discrimination that exists in favor of the Lehigh Valley Coal Sales Company, as

6861 against your firm in the way of the treatment accorded them by the Lehigh Valley Railroad? A. No, sir, I do not.

Q. The government petition in this case, on page 65, says that undue preferences have been given to the Lehigh Valley Coal Company and to the Lehigh Valley Coal Sales Company by the Lehigh Valley Railroad. Has your firm any knowledge or have you any knowledge of suffering from any undue preference afforded the Lehigh Valley Coal Company or the Lehigh Valley
6862 Coal Sales Company, by the Lehigh Valley Railroad? A. No, sir.

Q. Were you a shipper under the old 65 per cent. contract? A. We were shippers at that time.

Q. Over the Lehigh Valley Railroad? A. Over the Lehigh Valley Railroad.

Q. Did they work to your detriment in any way? A. Not that I ever discovered.

Q. Were you in active competition in all the markets you mentioned under those contracts? A. Yes, sir.

Q. And you managed to get along and make money?
6863 A. We managed to exist and to gather on a little tonnage every year, a little more.

Q. Your business continued to grow? A. Right along.

Q. Has ever since? A. And has since.

Q. And at a profit? A. I don't think we would do it for love.

Q. Does your firm actually pay the rates on the tonnage to Perth Amboy for transshipment? A. We pay the published tariff to the Lehigh Valley Railroad.

Q. Do you pay the rates to the line points where you
6864 sell coal? A. Only to collect stations.

Q. Only to collect stations? A. To prepaid stations.

Q. What is the arrangements as to stations which are not prepaid? A. The agent collects from the consignee direct.

Q. You sell him on the basis of—— A. (Interrupting.) F. o. b. mines.

Q. Plus freight rates? A. No, where the freight is collect we sell the coal f. o. b. mines, and the consignee pays his own freight.

Q. You sell f. o. b. mines? A. We sell always f. o. b. 6865
mine, and the consignee, if it is to a prepaid station, pays the published rate.

Q. The tonnage to Perth Amboy for transhipment, you pay the rate? A. We pay the rate.

Q. Have you any grounds for complaint of that rate? A. No.

Q. Are you satisfied with it? A. We are satisfied under the present conditions.

Q. Have you ever felt it worked a discrimination against you and in favor of any other shipper of an- 6866
thracite, as to the present rate to Perth Amboy? A. The present rate to Perth Amboy?

Q. Yes. A. I don't think that it has worked against us in any way at all.

Q. Is your firm interested in any way, in a financial relation with the Lehigh Valley Coal Sales Company, or the Lehigh Valley Coal Company? I mean do you own any of the stock? Do you own any of the stock of the Lehigh Coal Sales Company? A. Do I?

Q. Yes. A. No, sir.

Q. Do Whitney & Kemmerer? A. No, sir. 6867

Examination by Mr. Warren, representing the Lehigh Valley Coal Sales Company:

Q. The firm of which you are a member, as I understand it, is selling coal at certain localities on the line of the Lehigh Valley Railroad? A. Yes, sir.

Q. In considerable quantities, speaking year by year? A. Yes, sir.

Q. And is it, if you know, in competition at those 6868
points with Lehigh Valley Coal Sales Company sales agents? A. It is, sir.

Q. Will you name the localities on the line of the Lehigh Valley Railroad at which your firm are handling or merchandising anthracite coal, and in which the Lehigh Valley Coal Sales Company within your knowledge are also merchandising anthracite? A. Well, you can begin at Mauch Chunk, at Freemansburg, at Cementon, at Allentown, at Easton, at Phillipsburg, at Bound Brook, at South Plainfield, at Newark. That is in my

6869 own immediate territory from the Philadelphia office. From our New York Office we meet competition of the Lehigh Valley Coal Sales Company at every point on their road north to Buffalo.

Q. And you compete at Philadelphia, do you not? A. We meet competition of the Lehigh Valley Coal Sales Company at Philadelphia and every point in New Jersey where the Pennsylvania Railroad has a station.

Q. Do you sell any coal in Harrisburg? A. We sell coal in Harrisburg.

6870 Q. Don't you know that the Lehigh Valley Coal Sales Company also sells coal there? A. Well, I could never get a rate to come into Harrisburg with Lehigh Valley coal, except paying the lateral to Tomhicken.

Q. You don't understand me; doesn't the Lehigh Valley Coal Sales Company sell coal at Harrisburg, I asked you? A. Yes, sir.

Cross-Examination by Mr. Machen:

Q. Do you buy any coal from the Lehigh Valley Coal

6871 Sales Company? A. We do.

Q. At what mines? A. Well, we buy it f. o. b. Perth Amboy, and sell it at a profit, paying their full circular price, and we buy coal at line points, at their present circular rates and sell at a profit.

Q. You buy coal from the Lehigh Valley Coal Sales Company for line points? A. Yes, sir.

Q. Is this delivered to you at the mines? A. F. o. b. the mines.

Q. That is for line points? A. Yes, and at tide points it is delivered aboard vessels.

6872 Q. How do your prices at line points compare with the prices of the Lehigh Valley Coal Sales Company at the same points? A. The same prices.

Q. Who composes your firm? A. Mr. Mahlon S. Kemmerer.

Q. What is the name? A. Mahlon S. Kemmerer, Mr. Daniel Whitney, and Mr. Daniel F. Connor, and myself.

Q. Where is your office? A. In New York, 143 Liberty Street.

Q. In this same building we are now in? A. Yes.

Re-Direct Examination by Mr. Warren: 6873

Q. Do you lease any property from the Lehigh Valley Railroad Company or the Lehigh Valley Coal Company? A. No, sir.

Q. Have you any relations at all, of any kind, with the Lehigh Valley Railroad, other than that of a shipper over its lines? A. None that I can call to mind.

Q. Or your firm? A. No, sir.

Q. What floor are you on in this building? A. The second floor. Really the first floor, the first office floor.

Q. Can you name any other concerns that have offices 6874
on that floor? A. Well, we occupy most of the floor; other coal offices are distributed all through the building here.

Re-Direct Examination by Mr. Boles:

Q. From whom do you lease? A. From the—— I don't recall whether the lease is made out in the name of the—— It is not made out in the name of the Central Railroad of New Jersey, I will tell you that. Mr. Douty is the real estate man who signs the lease, a 6875
copy of which I have in Philadelphia.

Mr. Machen: Your residence is in Philadelphia, is it? A. Yes, sir.

Q. This is called the Coal & Iron Exchange Building, isn't it? A. It is called the Liberty Building, or Central Railroad Building; I have forgotten which.

By Mr. Boles: 6876

Q. You mean, Mr. Douty, is the man? A. Yes.

Q. He is the Real Estate Agent of the Central Railroad of New Jersey? A. Yes.

6877 **Robert H. Large,** called as a witness on behalf of the Lehigh Valley Railroad Company, being first sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. Mr. Large, what is your position? A. I am general coal freight agent of the Pennsylvania Railroad Company, Northern Central Railroad Company, West Jersey and Seashore Railroad Company, Philadelphia, Baltimore and Washington Railroad Company.

6878 Q. How long have you been connected with the Pennsylvania Railroad Company? A. Approximately twenty years.

Q. How long have you been in the coal traffic department? A. Ten years approximately.

Q. What positions have you held in that Department? A. Since June 1st, 1910, I have been general coal freight agent; prior to that and since February 15th, 1905, coal freight agent; prior to that division freight agent at Altoona.

6879 Q. Do you have in charge the general traffic policy and the rate making questions in respect of anthracite and bituminous coal and coke for the Pennsylvania Railroad Company? A. I have, under the direction of the vice-president in charge of traffic.

Q. And also for the Northern Central and West Jersey? A. Both the Northern Central and West Jersey, P. B. & W., and Pennsylvania; in other words, what is commonly termed the Pennsylvania Lines east of Pittsburg and Erie.

6880 Q. What is the Pennsylvania Railroad rate on anthracite to South Amboy? A. On prepared sizes $1.40; on pea, $1.25; on buckwheat, $1.15 per gross ton from the mines originating on the Pennsylvania Railroad Company and the Northern Central Railway Company.

Q. Are you familiar with the rate of the Lehigh Valley to Perth Amboy?

Mr. Machen: Is that South Amboy for local delivery?

The Witness: South Amboy f. o. b. for transshipment by vessel.

Q. What is the transshipment rate to Perth Amboy on 6881
the Lehigh Valley? A. My recollection is that prior to the decision in the Meeker case the rates to Perth Amboy from the mines on the Lehigh Valley were $1.55 on prepared sizes, $1.40 on pea and I think $1.20 on buckwheat.

Q. And you are familiar, are you not, with the fact that the Meeker rate only applied from the Wyoming region? A. Yes.

Q. What is your rate of $1.40 to South Amboy applied on, from the Wyoming region? A. From all regions, 6882
all mines on the Pennsylvania Railroad Company and the Northern Central Railway Company.

Q. Do you know the reasons why the Pennsylvania Railroad has maintained the rate of $1.40 from all regions to South Amboy? A. I do.

Q. Will you kindly state them? A. The $1.40 rate with the corresponding relations to it on the other sizes was adopted in April 1902 and was based on thirty-five per cent. of the average sale price of coal at South Amboy for a preceding period of years. The rate has been 6883
continued in effect over my remonstrance and the remonstrances of my predecessor by reason of the litigation first in the Hearst case and second in the Temple Iron Company case. Since being placed in charge of the coal freight department of the Pennsylvania Railroad Company it has been my constant desire to increase the rate to the basis in effect to the charge by the other lines; that, however, was objected to by our general counsel owing to the litigation before referred to.

Q. Did you recommend to Mr. Thayer, the late John 6884
B. Thayer, that the rate be raised? A. Yes.

Q. Was he agreeable to your recommendation? A. He was, and authorized me to do so provided the legal department were willing.

Q. Is it your belief now that the rate should be $1.55? A. It is.

Q. Or more? A. It is and always has been.

Q. Are you familiar with the policy of the Pennsylvania Railroad Company in respect of leasing trestles

6885 or yards along its line to dealers in bituminous or anthracite coal? A. I am.

Q. Will you state what the policy of the company is in that respect?

Mr. Machen: Objected to as irrelevant.

A. Such trestles or yards as we own, which are comparatively few and limited largely to Philadelphia and vicinity, are leased as a general proposition; that is our general policy is to lease those yards at a rental based
6886 on five per cent. on the valuation of the property, plus ten per cent. on improvements. The ten per cent. being to take care of the degradation, etc.

Q. Who pays the taxes? A. The Railroad Company.

Q. Who maintains the property? A. The Railroad Company.

Q. Who insures the property? A. I am not positive as to that, but I am quite sure the Railroad Company. There are some exceptions to that established basis, but that may be reasonably said to be the general
6887 policy of the company.

Q. Are the exceptions, toward a lower basis of the other way? A. Exceptions are on a lower basis.

Q. Does the company own trestles or yards to any extent at the various communities along the line of the Pennsylvania Railroad? A. In some instances, yes.

Q. And the same policy is pursued in leasing those? A. It does. There are also a number of cases where we own the ground and do not own the improvements.

Q. And under those circumstances on what basis do you lease? A. We lease the gound as a general policy
6888 based on five per cent. interest on the assessed valuation.

Q. The Railroad paying the taxes? A. That is my understanding.

Q. Are the valuations of the land in respect of what you state you are paying five per cent., the assessed valuations or agreed valuations? A. They are either the assessed valuations or agreed valuations.

Q. Is the Pennsylvania Railroad a large carrier of bituminous coal? A. Yes, the Pennsylvania Railroad is

the largest carrier of bituminous coal in the United 6889
States, and I think in the world.

Q. And about what percentage of its total traffic is bituminous coal? A. Of its total coal traffic about thirty-five and a fraction per cent.—35.4 in 1913.

Q. Do you use every proper and reasonable effort to increase that volume of tonnage? A. I do.

Q. Is the company a large carrier of anthracite? A. Yes; the total tonnage of anthracite coal carried by the Pennsylvania Railroad Company is approximately 10,000,000 tons per annum——when I say the Pennsyl- 6890
vania Railroad Company I am speaking of the lines east.

Q. 10,000,000 tons per year? A. Approximately. It varies from 9,000,000 to 12,000,000.

Q. Do you use every proper and reasonable effort to increase the volume of that tonnage sold? A. I do.

Q. Do you find that there is an active and keen existing competition in respect of the traffic in anthracite coal? A. There is decidedly so.

Q. Do you meet it every day in the conduct of your business? A. I do.

Q. Do you try to get all the coal you can away from 6891
any other railroad? A. I do, and I am not very successful.

Q. Do you find that Mr. Grier tries to get some of your coal away from you? A. He does, and he is more successful than I am.

Q. Is the Pennsylvania Railroad interested in any bituminous coal mines? A. It is not. The Pennsylvania Railroad owns or operates no bituminous coal properties; the Manor Real Estate & Trust Company, the capital stock of which is all owned by the Pennsylvania 6892
Railroad Company and its subsidiary lines, does own some limited undeveloped bituminous coal acreage, but neither the Pennsylvania nor the Northern Central Railroad Company own any operating bituminous properties.

Q. Is there a large quantity of bituminous coal produced along the lines of the Pennsylvania Railroad? A. There is an enormous tonnage produced upon the lines of the Pennsylvania Railroad Company, a greater ton-

6893 nage than produced along any other railroad in the United States.

Q. And is there a vast volume of tonnage consumed by the communities? A. The consumption of bituminous coal carried over the Pennsylvania Railroad Comwhile very large, will not by any means absorb the production on the line of the Pennsylvania Railroad Company.

Q. What is the policy of the Pennsylvania Railroad Company in respect of the making of joint rates on bi-
6894 tuminous coal with other carriers?

Mr. Machen: Objected to as irrelevant.

A. By reason of the fact that the production of bituminous coal on the lines of the Pennsylvania Railroad Company is materially greater than the consumption of bituminous coal at localities reached directly by the Pennsylvania or its controlled and operated lines, it is essential that in order to develop and increase our traffic that we establish joint rates with connecting lines on such coal
6895 as originates on our line wherever possible; but by reason of the fact that the production is far greater than the market will take our policy with respect to establishing joint rates with other railroad companies that originate bituminous coal is diametrically the opposite; that is to say, we do not do so.

Q. Would it be your advice and action to pursue the same policy if the same conditions existed in respect of anthracite?

Mr. Machen: Objected to as irrelevant and
6896 otherwise inadmissible.

A. I am unable to say, but the situation with espect to anthracite coal is precisely the reverse. The Pennsylvania Railroad Company only produces—that is, the Pennsylvania Railroad and the Northern Central only produce or there is, rather, only produced on the lines approximately fifty per cent. of the anthracite coal consumed locally on their lines. The result is that in so far as the anthracite coal is concerned we are obliged

to go to our connections to seek the coal to take care of our market. 6897

Q. But, if the reasons for establishing the policy in respect of the bituminous traffic prevailed in respect of the anthracite your policy would be the same?

Mr. Machen: I make the same objection.

A. I think it is safe to say our policy would be precisely the same on anthracite that it is to-day on bituminous.

Q. What are some of the reasons for that policy, in the way of the cost of transportation or the economy of transportation? A. Well, of course, it is of great advantage to the Railroad Company by reason of the fact that it obtains the entire revenue and is, therefore, in a position to more economically operate its railroad; it is also a great benefit, of course, to the producers of coal on the railroad company, and a fair benefit to them, they being entitled to the market to which they have direct access. 6898

Q. Does the interchange of equipment between the carriers involve a considerable operating cost? A. It does. 6899

Q. Is it one of the large elements of cost in conducting the transportation? A. It is.

Q. And in respect of every joint rate there must necessarily be an interchange of cars, both loaded and empty? A. Yes. In other words, the situation is that the production of bituminous coal on the lines of the Pennsylvania Railroad is so great that it would be an economic waste for the Pennsylvania Railroad Company to establish joint rates with other railroads originating bituminous coal at the sacrifice of its own business. 6900

Q. How long has that been the policy of the Pennsylvania Railroad? A. For a great many years.

Q. As long as you have been in charge of the traffic department? A. Yes, and considerably prior to that time. There are some minor exceptions, such as the Huntington and Broad Top Mountain Railroad, which has no other outlet and with which we have joint rates.

6901 Q. That is part of the Pennsylvania system? A. No, it is an independent line, it only has one connection and that is the Pennsylvania Railroad Company, and certain other railroad companies which we have a proprietary ownership in.

Q. Are you familiar with the policy of competing railroads in your same general territory on this same question? A. I am. I don't know that I am familiar exactly with the expressed policy, but I am familiar with its practice.

6902 Q. You know what occurs? A. Yes.

Q. What occurs in connection with the Baltimore & Ohio, for instance, as to a traffic which is competitive between your company and that company?

Mr. Machen: Objected to.

A. The practice of the Baltimore & Ohio Railroad Company, or any of the other large producers of bituminous coal in the eastern section of the country, is precisely the same as the practice of the Pennsylvania lines east.

6903

Direct Examination by Mr. Warren:

Q. Mr. Large, are you familiar with the amount of taxes paid annually by the railroad on the facilities which it leases to shippers of which you have spoken? A. No. I think it is safe to say it is not very considerable because the yards that are owned by us are comparatively inconsequential in number and are old and been in existence for many years and we have not built any new yards in recent years.

6904 Q. Are you familiar with the figures as to the amount of expenditures by way of repairs by the Railroad Company? A. No, I am not.

Q. Or the insurance premiums if they are paid by the Railroad? A. No, I am not.

Q. In other words, you are not familar with the facts as to those three items? A. I am not, and I am not clear in my mind that the insurance is paid by us on the improvements, but I think that it is.

Cross-Examination by Mr. Machen: 6905

Q. Were you summoned as a witness in this case, or did you come voluntarily?

Mr. Boles: He came voluntarily at my request.

Q. Mr. Large, at what points does the Pennsylvania Railroad or any of its subsidiaries connect with the Lehigh Valley Railroad? A. We connect with the Lehigh Valley Railroad at Phillipsburg Junction, New Jersey, which is on the Delaware River directly across from Easton; at Metuchen, New Jersey, which is a few miles 6906
west of Jersey City; at New Boston Junction, which is in the Lehigh coal district, north of Pottsville; at Tomhicken, which is a few miles distant from the New Boston Junction, and at South Wilkes-Barre or Wilkes-Barre. We have other connections with the Lehigh Valley Company in the west, such as Wadsworth Junction, near Rochester, at Buffalo and other localities where we cross the Lehigh Valley Railroad. I understand your question to relate, however, to the anthracite situation more particularly. 6907

Q. You also have a connection with the Lehigh Valley at Elmira, have you not? A. At Elmira, yes.

Q. And at a point west of Geneva, some junction west of Geneva? A. Wadsworth Junction; it is below Rochester; and at Stanley.

Q. Coal originates on the line of the Pennsylvania, or the Northern Central, we will say, in the neighborhood of Mount Carmel at Shamokin, and it is destined to a coal yard on the Lehigh Valley Railroad at Elmira; does the Pennsylvania Railroad absorb the switching charge of the Lehigh Valley for switching from the line 6908
of the Northern Central at Elmira to the Line of the Lehigh Valley Railroad? A. We absorb the switching charge of the Lehigh Valley Railroad Company at Elmira on bituminous coal. I am not clear in my recollection as to whether or not we do on anthracite coal, but I think we do.

Q. Your tariff shows? A. The tariff will show.

6909 Q. Similarly at Buffalo? A. We do absorb all the connecting line switching charges yes, at Buffalo, on both classes of traffic.

Q. You have spoken about leases of trestles and so forth; in such case what proportion is there between the value of the trestle and the value of the real estate, the value of the improvements I should say and the value of the real estate; is the greater value in the value of the trestle or in the value of the real estate? A. That varies, of course, entirely with the location.

6910 Q. The trestle is rather an expensive structure, isn't it? A. It may be and may not be; our trestles, as I said a few moments ago, are rather antiquated and it has been our policy in recent years to not build trestles.

Q. You let the shippers build the trestles? A. We may lease the ground and they povide the facilities. There are localities such as Baltimore where we own a number of trestles, but they are rather antiquated and the relationship between the value of the trestle and the value of the ground I am not familiar with.

6911 Cross-Examination by Mr. Gordon:

Q. Mr. Large, in your testimony in the new Reading case, you stated, did you not, that the production of anthracite coal along the line of the Pennsylvania Railroad was less than half the consumption along the line? A. I stated that the production along the line of the Pennsylvania lines east was approximately, I think, half of the total anthracite coal tonnage transported by the lines east.

Q. And that is the explanation of your willingness to
6912 enter into joint rates with other carriers originating anthracite, in order to supply the markets on your own line? A. It is essential that we establish joint rates with main lines on anthracite coal because we need the tonnage produced along the lines to take care of the market.

Q. Where do you receive coal from these other originating anthracite carriers? A. It depends on the destination of the coal.

Q. Coal which is destined to New York tidewater? A. We don't handle any tidewater coal except from the Lackawanna and D. & H.

Q. Where do you receive the coal from them? A. From 6913
Wilkes-Barre or vicinity; Wilkes-Barre and Nanticoke.
Q. How does it come to New York to tidewater? A. Down over the Northern Central to Sunbury and east via Harrisburg.
Q. How long a haul is that? A. I don't recall the exact distance; the rate, however, is higher than our $1.40 rate.
Q. Isn't it 276 miles? A. I haven't the distance in mind.

Mr. Machen: You mean the total rate? 6914
The Witness: The total rate on the D. & H. is higher than our local rate to tidewater f. o. b.

Q. In other words, you do not pay the gathering charges of the initial carrier? A. It is a joint rate, but it is higher than our rate.
Q. So that a man on the lines of the Lackawanna and the D. & H., an operator who desired to ship coal to tidewater over your line would have to pay some initial rate to the D. & H. or the Lackawanna and then your $1.40? A. No, sir; we have a joint rate published by 6915
either our own or the D. & H. or the Lackawanna, but that joint rate in the aggregate, which is a rate in and of itself, is higher than the rate we published from the mines, situated on our own line.
Q. It is higher—what is it? A. $1.55.
Q. So that a shipper shipping from other lines via the Pennsylvania to tidewater pays $1.55 for his transportation? A. That is correct, on prepared sizes.
Q. And what is it on smaller sizes? A. My recollection is that it is $1.40 on pea and $1.25 on buckwheat. It 6916
is needless to say, however, that there is very little of that kind of coal shipped from those lines to tidewater over our line, because it goes direct over the road that originates it.

By Mr. Machen:
Q. How much does the Pennsylvania get out of that joint rate? A. If that is pertinent to the issue I have no objection to stating it.

6917 Mr. Boles: Would you rather not state it?

The Witness: It is a question of division between two railroad companies.

Q. I insist upon it.

Mr. Boles: I will instruct the witness he doesn't have to answer it.

Mr. Machen: I will ask the Examiner to certify to the Court.

6918 Q. You refuse to answer the question?

Mr. Boles: No; I instruct you that you don't have to answer unless you want to.

Q. I ask you do you refuse to answer?

Mr. Boles: He doesn't answer that either.

Q. You refuse to answer the question, do you? A. (No answer.)

Q. You make no answer? A. I am instructed by Mr.
6919 Boles it is not necessary to answer.

Q. And you obey his instructions? A. Naturally, as I came here at his request I obey his instructions.

Mr. Boles: That is a private matter between the Pennsylvania and its connecting lines, isn't it?

The Witness: Of course, it has no bearing upon what the public pays.

Q. Then you refuse to state how much the Pennsyl-
6920 vania Railroad receives for the transportation of coal delivered to it by the Delaware & Hudson and the Delaware, Lackawanna & Western and carried from the connection between those lines in the Wyoming Valley down the Susquehanna to Sunbury and thence to Harrisburg and eastward to tidewater at New York?

Mr. Boles: I instruct you that you need not answer that question.

A. I will answer that question to this extent. The 6921
amount varies in accordance with the size or character of the coal, in accordance with the point of origin and differs in connection with the different railroad companies.

Q. You say you don't get a great amount of coal of this character from the Delaware, Lackawanna & Western and the Delaware & Hudson? A. We get to tidewater practically none.

Q. Do you try to get as much as you can? A. Yes, that is what we are in business for. 6922

By Mr. Boles:

Q. You receive a large volume of anthracite tonnage from the Lehigh Valley at Phillipsburg, do you not? A. We receive a large volume of anthracite coal from the Lehigh Valley at Phillipsburg and at other junction places.

Q. Phillipsburg is the largest? A. The largest tonnage is taken at Phillipsburg; we also get some at New Boston Junction and some at Metuchen. 6923

By Mr. Machen:

Q. To what point is the tonnage by Phillipsburg, for instance? A. Largely south and east of Trenton.

Q. That is to Philadelphia and to points on the Philadelphia, Baltimore and Washington and—— A. Down the Delaware peninsula including Washington. The tonnage to points east of Trenton I do not recall exactly where the dividing line is, but somewhere between Newark and Trenton we receive from the Lehigh Valley Railroad at either Metuchen or Perth Junction—I don't 6924
recall now exactly—we receive some western tonnage, and Pennsylvania tonnage via Wadsworth Junction.

Q. That is from the Lehigh Valley at Wadsworth Junction? A. Originated on the Lehigh Valley Railroad and delivered to us at Wadsworth Junction.

Q. For points in western New York and Pennsylvania? A. For points in New York and western Pennsylvania, yes, and the Alleghany Valley.

6925 **A. M. Bingham**, called as a witness on behalf of the Lehigh Valley Railroad Company, being first sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. Mr. Bingham, what is your position? A. At the present time secretary of the Temple Coal Company.

Q. How long have you been secretary of the Temple Coal Company? A. I think the appointment was made about June 23d, to the best of my recollection.

6926 Q. 1914? A. 1914.

Q. What is the Temple Coal Company? A. It is a company organized to take over the coal properties purchased, or the stocks of which were purchased, by Mr. S. B. Thorne from the Temple Iron Company.

Q. Were these properties, or the stocks, rather, of the subsidiary companies of the Temple Iron Company which were sold by the Temple Iron Company in pursuance of the decree of the District Court in Philadelphia? A. Yes, that is my understanding.

Q. Was the Temple Coal Company organized by Mr.
6927 Thorne to take over these properties? A. Yes, sir.

Q. What was your position prior to June 1914? A. I was secretary and assistant treasurer of the Temple Iron Company.

Q. How long had you held that position? A. I held the position as assistant treasurer about I should say eleven years; the position as secretary of the company since October first, 1909.

Q. When did you resign your different positions with the Temple Iron Company? A. May 29th, 1913.

6928 Q. And what was your occupation in the interim between that date and—— A. From that time up to June of this year I was secretary and treasurer of the underlying companies of the old Temple Iron Company.

Q. Secretary and treasurer of each company? A. Each of the underlying companies.

Q. Are you familiar with the manner in which the underlying companies conducted their business since 1909 or 1910? A. Since 1910, yes, sir.

Q. Now, will you explain in what manner the subsidiary companies of the Temple Iron Company in what

manner those subsidiary companies conducted their business between say January 1911 and the sale thereof in June 1914? A. They were conducted separately and independently, each of the underlying companies was conducted independent of the others, and had its own book accounts and its own bank accounts. 6929

Q. And was each of them actively engaged in mining and shipping coal, anthracite? A. Yes.

Q. On its own account? A. I say they were actively engaged in mining coal, but not shipping.

Q. They sold it at the breaker? A. They sold it at the breaker. 6930

Q. Each was engaged in mining coal on its own account? A. Yes.

Q. What did they do with the funds which they received from the sale of the coal? A. Those funds accumulated in the treasury.

Q. With the exception, of course, of what was paid out for miners' wages and actual cost of mining? A. Yes.

Q. Those funds accumulated in the treasury—— A. What I meant to say was the net funds, you know.

Q. The net funds accumulated in the separate treasury of each company? A. Yes. 6931

Q. Each company had its own bank account? A. Yes.

Q. And its own check book? A. Yes.

Q. After January 1911 was there any distribution of funds in any manner by any of these subsidiary companies to the Temple Iron Company? A. Now, my recollection is that there was some money paid over during that time to pay for material at the collieries and so forth; for instance, storehouse material.

Q. But nothing in the way of distribution of earnings? A. No, sir. 6932

Q. Were you familiar with the opinion of the Supreme Court as to the Temple Iron Company in the Reading case and the decree of the District Court in Philadelphia which was made thereafter? A. In a general way; I am not familiar with the details.

Q. You knew of it? A. Yes.

Q. Was there an actual attempt made in good faith to carry out the mandates of that decree in every respect

6933 by these subsidiary companies of the Temple Iron Company and by the Temple Iron Company itself?

Mr. Machen: Objected to as asking a question of law.

A. Yes, indeed.

Q. At the time you resigned from the Temple Iron Company, which you say was in May, 1913—I understood you to say?—— A. Yes.

Q. Did not Mr. A. F. Law resign at the same time?

6934 A. Yes, sir.

Q. He had been vice-president of the Temple Iron Company, had he not? A. Vice-president and treasurer.

Q. After that date was there any officer or employe of the Temple Iron Company who was also an officer and an employe of the Northwest or the Sterrick Creek or the Mt. Lookout or any of these subsidiary companies? A. No, sir.

Q. Mr. Law died, did he not, very recently? A. He died just recently, about two weeks ago, I believe.

6935 Q. And Mr. S. B. Thorne, who was the purchaser of the stocks and properties of the so-called subsidiary coal companies of the Temple Iron Company, took possession of those properties, paid over the purchase money, including the net income of all those subsidiary companies since 1911, about the latter part of June of this year, did he not? A. Yes. I might explain here that the bid was accepted on May first. I believe the earnings went to Mr. Thorne for the months of April, May and June of this year.

Q. The published offer said that the April earnings

6936 would go with the bid, did it not? A. Yes, sir.

Q. He took possession about the last of June, 1914, as of May 1st? A. As of May first.

Q. Now, he had had no association or relation with the Temple Iron Company or with any of the subsidiary companies of the Temple Iron Company prior to that time, had he? A. Well, not since 1902. Of course, at that time he was general manager of the Temple Iron Company. He resigned, I believe, in the year 1902, and

since which time he has had absolutely no connection with the Temple Iron Company. 6937

Q. Isn't it a fact that in 1902 he was purchasing agent? A. No, he was general manager of the Temple Iron Company at that time.

Q. And he had no relation so far as you know with any of the anthracite railroads up in that country? A. None whatever as far as I know.

Q. Nor with any of the subsidiary coal companies, so-called, or the Railroad Coal Companies, so-called? A. No, sir. 6938

Q. In other words, he was not interested in any way with the Hillside Coal & Iron Company, or the Pennsylvania Coal Company, or the Delaware & Hudson Company, or the Delaware, Lackawanna & Western Railroad Company, or the Delaware, Lackawanna & Western Coal Company, or the Lehigh Valley Coal Company, or the Philadelphia & Reading Coal & Iron Company; in other words, none of those companies? A. He had no connection with any of those companies so far as I know.

Q. As you understand it he is in the coal business in a private operation with Mr. Neale in Schuylkill County and is a seller of anthracite coal here in New York at 1 Broadway? A. Yes, sir. 6939

Cross-Examination by Mr. Machen:

Q. Did Mr. Thorne buy the stock of the subsidiary companies of the Temple Iron Company for himself individually or on behalf of a syndicate? A. For himself.

Q. And he had no one associated with him in the purchase? A. Not so far as I know. 6940

Q. You don't know anything about it? A. I can tell this: that I do know, not from any record, but I know off-hand that Mr. F. H. Hemelright is associated with him.

Q. Do they together own all the stock of the Temple Coal Company? A. No.

Q. The Temple Coal Company was formed by the purchaser of the subsidiary companies of the Temple

6941 Iron Company for the purpose of holding these stocks, was it? A. Yes, sir.

Q. Is the corporate existence of the companies whose stock was purchased still maintained, the Sterrick Creek Coal Company and the Forty Fort Coal Company and so forth? A. So far as the Northwest Coal Company, Sterrick Creek Coal Company and the Babylon Coal Company, they have been merged into what is known as the Temple Coal Company; the Forty Fort Coal Company and Mt. Lookout Coal Company and the Lackawanna Coal Company, Limited, still retain their independent identity.

6942

Q. But their stocks are held by the Temple Coal Company, is that correct? A. Yes. You asked the question a minute ago if Mr. Thorne and Mr. Hemelright were the entire owners of the stock. Brown Brothers & Company in Philadelphia are the bankers, and my understanding is that they have some of that stock. That is as far as I know.

Q. How much you don't know? A. No, sir; they were the financial backers of Mr. Thorne as I understand it.

6943 Q. Hemelright is the vice-president of the Temple Coal Company, is he not? A. Yes, sir.

Q. And is the practical operating man? A. Yes.

Q. And he is associated together with Mr. Thorne in his present operation and control of the companies he purchased? A. Yes.

Q. He has no relation now to the Temple Iron Company in any way? A. Absolutely none.

Q. Nor any of the subsidiary companies? A. None.

6944 By Mr. Boles:

Q. Lehigh Valley Railroad Company owns no stock in the Temple Coal Company? A. No, sir.

Q. Or the Lehigh Valley Coal Company? A. No, sir.

Q. Or Coxe Brothers & Company? A. No, sir.

Q. Or the New York & Middle Coal Field Railroad & Coal Company? A. No, sir.

Q. Or the Lehigh Valley Coal Sales Company? A. No, sir.

Q. Or the Delaware, Susquehanna & Schuylkill Railroad Company? A. No, sir.

William J. Burton, called as a witness on behalf of the 6945
Lehigh Valley Coal Sales Company, being first sworn, testified as follows:

Direct Examination by Mr. Warren:

Mr. Warren: On behalf of the Lehigh Valley Coal Sales Company I offer in evidence a certified copy of the certificate of incorporation of the Lehigh Valley Coal Sales Company certified under the hand of S. D. Dickinson, secretary of the State of New Jersey, certificate bearing date the 22nd day of January A. D. 1912, under the 6946
official seal of the State of New Jersey.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 5.**

Mr. Warren: I next offer in evidence as **Lehigh Valley Coal Sales Company Exhibit No. 6,** a copy of the minutes of the first meeting of the incorporators.

I next offer in evidence copy of the minutes of the first meeting of Board of Directors, the entire minutes. 6947

Marked **Lehigh Valley Coal Sales Company Exhibit No. 7.**

I next offer in evidence a transcript from the records of the meeting of the Board of Directors of the **Lehigh Valley Coal Sales Company of February 27th, 1912.**

Marked **Lehigh Valley Coal Sales Company Exhibit No. 8.**

I next offer in evidence transcript of the meeting of the Board of Directors of the Company 6948
held on the 28th day of February, 1912, portions of which as I understand it the Government offered.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 9.**

Q. Have you the minute book with you? A. Yes.

Q. Does it contain all the minutes of the Lehigh Valley Coal Sales Company since its organization? A. Yes, sir.

6949 Q. Stockholders and directors? A. Both.

Q. And the two annual meetings of the stockholders since the organization of the company, does it? A. Yes, sir.

Q. And also the minutes of the Board of Directors as and when held? A. Yes, sir.

Q. I understood you to say that Mr. Wilson was the first secretary of the company? A. That is correct.

Q. Mr. Wilson was elected vice-president and secretary, was he not? A. Yes, sir, vice-president and secretary.

6950 Q. Mr. Skeele died when? A. About the end of August, or the beginning of September, 1912, I don't know the exact date.

Q. And Mr. Wilson was elected as his successor on the 27th day of September, 1912, was he not? A. That is right.

Q. In looking over the minute book I notice that there are waivers of notice on the part of the incorporators and directors of date February 6th and February 16th, Mr. Burton; I don't want to encumber the record by

6951 copying these entire, but they both appear here, do they not? A. Yes, sir.

Q. So as to comply with the law of New Jersey as you understand it in the matter of the first meeting of the incorporators and directors, isn't that right? A. Yes, sir, that is true.

Q. I note also in reading the minutes of several of the directors' meetings there are resolutions appropriating certain sums; to illustrate; here is a meeting of November 22nd, 1912, and here is a resolution resolving

6952 that the sum of $90,000 be set aside out of the income as a special maintenance reserve for the purpose of providing for repairs and improvements to storage and shipping plants and yards; do you recall that resolution? A. That is one of several.

Q. And there are several instances of such appropriation of a similar sum and in some instances a different sum for that purpose, were there not? A. That is true.

Q. And the minutes disclose that shortly after the organization you effected a loan with Drexel & Company for a million dollars, do they not? A. Yes, that is right.

Q. The minutes also show time loans or temporary loans at different times aggregating several hundred thousand dollars, do they not? A. Yes, they do. 6953

Q. It is your recollection that the first dividend declared by the Coal Sales Company was at the meeting of the directors of September 27th, 1912, payable the next month? A. Yes, sir.

Mr. Warren: I read the resolution out of this minute: "Resolved, That a dividend of two and one-half per cent., or $1.25 per share, be declared payable October 21st, 1912, to those stockholders of the company holders of full share certificates of stock registered on the company's books at the close of business October 10th, 1912." 6954

Q. In connection with this dividend and the subsequent dividends was there notice sent to all stockholders of the declaration of the dividends, or in what way were they apprized of the declaration of the dividend? A. The dividend declaration was advertised in newspapers and at the time the checks were sent out a printed card accompanied them stating the purpose of the remittance. 6955

Q. The next dividend apparently was declared at the meeting held December 27th, 1912, of a similar amount payable January 20th, 1913, to stockholders of record at the close of business January 7th, 1913, isn't that right? A. Yes, sir, that is my understanding.

Q. I note here the minutes of an annual meeting of the stockholders, the first annual meeting after the incorporation, which was held as stated here, at the principal office of the company, No. 15 Exchange Place, Jersey City? A. Yes. 6956

Q. On January 27, 1913? A. That is right.

Q. In accordance with an advertisement, copy of which is apparently pasted in the minute book? A. Yes.

Q. Announcing the fact of the intended annual meeting, is that right? A. And in addition to the advertisement each stockholder, each full share stockholder, got a notice by mail.

6957 Q. And I notice reference is made here by you to the fact that this advertisement was inserted in the Jersey Journal, the New York Sun and the Philadelphia Public Ledger? A. Yes, sir.

Q. Proxies were sent out to stockholders prior to the meeting, were they? A. Yes.

Q. The minutes of this meeting, page 47, announce that the following persons represented stockholders by proxy and the names of those representing stockholders are G. N. Wilson, representing some eighty odd thou-
6958 sand shares of stock—that is correct, isn't it? A. That is correct.

Q. The transfer book and the stock book of the company were produced and remained open during the meeting, were they? A. That is right.

Q. Inspectors of election were appointed from the stockholders. I notice three names here, H. A. Black, L. H. Gunther, and John R. Turner, none of them being a candidate for office of director, were appointed inspectors, that is a correct statement, is it? A. Those were the names of the inspectors; they were not stockholders.

6959 Q. Who are those gentlemen? A. They are connected with the Corporation Trust Company, which is our agent in New Jersey.

Q. At the office of which you held your annual meeting? A. Yes, sir.

Q. Your annual meeting for the year 1914, was it conducted in the same way, by advertisement and appointment of inspectors of election, by issuing proxies to the stockholders of record as of some previous date to the date of the meeting? A. Yes, sir.

6960 Q. By the representation either in person or by proxy of the stockholders as appears in the minutes? A. Yes, sir.

Q. Do you remember who were asked to act as or who were named in the notice of the proxy, to whom proxies could be sent? A. The persons named to act as proxies for the stockholders were George N. Wilson, Horatio G. Lloyd and Francis L. Hine.

Q. Did your company make application to be listed on what is known as the New York Curb Market shortly after your organization? A. Yes, sir.

Mr. Warren: I offer in evidence copy of the 6961
application blank for industrial corporations addressed to the New York Curb Market Association, 25 Broad Street, New York, together with a copy of a letter from the secretary of that company to the Lehigh Valley Coal Sales Company announcing that the application had been received and approved.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 10.**

6962
Q. You have compared those with the originals in your office, have you? A. Yes, I have compared them and they are correct.

Q. Will you briefly describe what is called the New York Curb Market Association; that is to say, it is an exchange of what character of stock? A. It is an exchange on which stocks of mining, industrial and oil corporations are bought and sold. Its headquarters is at 25 Broad Street, New York City.

Q. I show you a sheet, is this a typical sheet such as they issue; it apparently is dated New York, Thurs- 6963
day, July 9th, 1914? A. Yes, this is their daily quotation sheet.

Mr. Warren: I offer this in evidence.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 11.**

Mr. Warren: I read an extract from the minutes of the directors of the company held April 26th, 1912: "The president presented a notification from the secretary of the New York Curb Market Association to the effect that the associ- 6964
ation had approved the application to list this company's stock on March 28th. Upon motion duly made and seconded it was resolved that the action of the vice-president in filing an application to list the stock of this company with the New York Curb Market Association be and the same hereby is approved."

6965 Q. Do you remember how much the company paid for the privilege of being listed on the New York Curb Market? A. $100 is the listing fee.

Q. At about the time of the acceptance by them of your application? A. Yes, sir.

Q. And it was paid? A. Surely.

Mr. Warren: I offer in evidence transcript of meeting of Board of Directors of March 22, 1912.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 12.**

6966

Q. Is this the official statement of the New York Curb Market Association covering its list of membership and its business, its officers and directors, which it issues to those who are qualified to list their stocks on its exchange? A. Yes; it also includes the names of the companies whose stock is listed.

Q. This is for the current year, is it not? A. Yes, that is correct.

Q. Do you find the Lehigh Valley Coal Sales Company listed in this list of concerns whose stocks are
6967 dealt in what is commonly called the New York Curb Market in the list of investments? A. Yes, sir, it is listed.

Q. You note on this list the Baldwin Locomotive Works, do you not? A. Yes, sir.

Q. The Borden Condensed Milk Company? A. Yes.

Q. Burns Brothers? A. Yes.

Q. Who are Burns Brothers and what is their business, if you know? A. Burns Brothers is a corporation that deals in coal.

6968 Q. What kind of coal? A. Anthracite coal.

Q. The Kelly-Springfield Rubber Tire Company is listed there, is it not? A. Yes, sir.

Q. The Kolb Bakery Company? A. Yes.

Q. The Standard Oil Company of New Jersey? A. Yes, sir.

Q. The United States Motor Company? A. Yes, sir.

Q. The United Cigar Stores Company? A. Yes, sir.

Q. The United States Coal Mining Company? A. Yes, sir.

Q. And a long list arranged in alphabetical order of 6969
concerns whose stocks are dealt in on that market, do you not? A. Yes, sir.

Q. While we are on that subject, I show you what is called here the Investors' Pocket Manual; do you know what that is? A. It is a manual which gives the quotations among other things of the New York Curb Market.

Q. Both of bonds and stocks? A. Both bonds and stocks.

Q. I ask you to look at pages 246 and 247 headed, "New York Curb Market, Stocks" in that issue of this 6970
Investors' Pocket Manual for the month of December 1913, and read, if you will please, the Lehigh Valley Coal Sales Company—— that entire line starting with the Lehigh Valley Coal Sales Company? A. Lehigh Valley Coal Sales, par value $50, capital stock, $6,060,800; Dividends—return and paid—— that is the return is ten per cent. and paid quarterly. J. That I presume, stands for January; 10 Q. J. November 1913: the high quotation was 190 and the low quotation was the same, 190. The letter X accompanies those figures as showing that the quotation was ex-dividend. That is, 6971
deducting the amount of the current dividend that had been declared. The 1913 high and low prices to November 30th of that year were 225 in January, that is the high price, and 183 in June, which is the low price. For the whole year of 1912 the high price was 265 and the low price for that year was 180.

Q. Now, I show you the same production called the Investors' Pocket Manual for the month of July 1914, and under the heading "New York Curb Market," page 262, will you please read the Lehigh Valley Coal Sales 6972
Company which appears there in alphabetical order, does it not, with other lists of stocks? A. Yes, it appears in alphabetical order. Lehigh Valley Coal Sales, par value $50, capital stock $6,060,800; Dividends—return ten; paid Q. J. June 1914; the high quotation is 180 and the low quotation is 165.

Mr. Machen: That is the range for the month, is it?

The Witness: That is the range for the month.

6073 A. (Continuing) By the way, I notice that these figures here appear to be reversed; they have it here the high quotation is 165 and the low is 180.

Q. They have it the wrong end to? It looks like it to me. It is a printer's error I guess, and the 1914 quotations for the year up to June 30th are marked here as high as 165 and low 180.

Q. Anything else? A. Year 1913, the end column shows that the high quotation for 1913 was 225 and the low quotation 183.

6074 Q. Did you cut that out from the Evening Sun for Thursday, July 22, 1914? A. Yes, that is a clipping that I cut out.

Q. Will you read the quotation there as of that date as reported in the New York Sun for that evening of Lehigh Valley Coal Sales Company stock? A. Lehigh Valley Coal, closing price to-day, bid 170, asked 180; yesterday's closing bid 170, asked 180.

Q. It is marked there Lehigh Valley Coal, which means Lehigh Valley Coal Sales Company, does it not? A. Undoubtedly.

6075 Q. Lehigh Valley Coal Company stock is not on the Curb Market? A. Not that I know of.

Q. You know that it is not, don't you? A. I am quite sure it is not.

Q. I show you a list of stockholders of the Lehigh Valley Coal Sales Company headed "Classification of stock, owned other than by individuals or fiduciaries, July 9th, 1914"; did you make up that list? A. Yes, sir.

Q. And is it a correct transcript from the stock lists of the Lehigh Valley Coal Sales Company? A. It is a

6076 correct transcript as indicated on the title page.

Mr. Warren: I offer that in evidence.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 13.**

Q. I show you a statement "Lehigh Valley Coal Sales Company, sundry large stockholders as of June 30, 1914." Did you make up this list from the records of the Sales Company of these few names? A. Yes, sir.

Mr. Warren: I offer this in evidence. 6977

Marked **Lehigh Valley Coal Sales Company Exhibit No. 14.**

Q. Have you at my request gone over the list of the Lehigh Valley Railroad stockholders as of sometime in April of this year, which the Government offered in evidence here, that large roll which Mr. Baird made up? A. I have gone over that stock list; I think it is in March, 1914.

Q. Have you got that here? A. I haven't got it. I 6978
thought it was as of March 28th; that is the date of record.

Q. Where is that list I asked you to go over? A. It is over in my office.

Q. I note on this list Mr. Benjamin N. Duke of New York, owning 3,125 shares of the Coal Sales Stock and Kean, Taylor & Company owning 2,100 shares, and Howard T. King of New York owning 2,733 shares. Were you able to find their names as being stockholders upon the Lehigh Valley Railroad Company's list which you examined? A. No, sir, their names are not on it. 6979

Q. Do you know how recently they acquired these what I at least would say large holdings in the Sales Company stock? A. I think their holdings—the beginning of their holdings—runs back to very nearly the time that the Sales Company began business.

Q. Do you know when they purchased the large figures here—assuming they are large now—take Mr. Duke, for instance, 3,125 shares? A. I could not say offhand as to that.

Q. Opposite the typewritten list of these stockholders 6980
and their holdings in the Sales Company a lead pencil column indicates I assume the holdings as you found them on the Lehigh Valley Railroad Company's stockholders' list which the Government offered in evidence? A. Yes, that is what the lead pencil figures mean.

Q. As the names appear and the amount of the stockholding appears on that list—— A. On the Railroad Company's list, yes, sir.

6981 Q. I show you a statement,—the Lehigh Valley Coal Sales Company's comparative statement showing difference in accounts of sundry stockholders held approximately on April 22nd, 1914; did you make up this list from your records of the company as to the stockholders? A. Yes, sir.

Mr. Warren: I offer this in evidence.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 15.**

6982 Q. This list discloses the sales by the various persons and concerns of stock and the purchases by persons and concerns of stock at different times through the period it covers, does it not? A. Yes, sir.

Q. The first column is "Held at organization," the second is "Allotted as per subscription 1/17/14"—what does that mean? A. That means the stock shown in that column was allotted to the stockholders by the twenty-five per cent. stock allotment, certificates for which were issued to the stockholders on January 17th, 1914.

6983

AFTER RECESS. JULY 28, 1914, 2 P. M.

William J. Burton, resumed.

Direct Examination by Mr. Warren:

Q. Will you state, Mr. Burton, whether the Lehigh Valley Railroad Company or the Lehigh Valley Coal Company ever subscribed for, or owned a single share of

6984 stock in the Lehigh Valley Coal Sales Company? A. Neither the Lehigh Valley Coal Company nor the Lehigh Valley Railroad Company ever subscribed to or owned a single share of the stock of the Lehigh Valley Coal Sales Company.

Q. Did Coxe Brothers & Company, Incorporated, ever subscribe to or own a single share of stock? A. No, sir.

Q. Did the Delaware, Susquehanna & Schuylkill Railroad ever subscribe to or own a single share of stock? A. No, sir.

Q. Did the New York & Middle Coal Field Railroad & Coal Company ever? A. No, sir. 6985

Q. Did the G. B. Markle Company? A. I don't think so.

Q. Is there any doubt in your mind? A. I never looked that up.

Q. Well, make a memorandum, then, please, so you can tell me positively whether they subscribed for or ever owned a single share of stock in that company?

From the Minutes of the Meeting of the Directors of The Lehigh Valley Coal Sales Company of Date September 26, 1913, I Read in Evidence the following: 6986

"On motion of Mr. Lamont, duly seconded, and by the affirmative vote of all present, it was Resolved that the president appoint a committee of three directors of which, ex-officio, he is to be one, to consider the question of the nature and extent of future dividends and to report to this Board the result of their investigation. The president thereupon appointed Messrs. Hine and Lamont to act with himself as the committee under the foregoing resolution." 6987

I Read from the Minutes of October 24th, 1913. Page 75.

"The Committee appointed at the last meeting of the Board to consider the question of the nature and extent of future dividends verbally reported to the Board and recommended that, First, on full shares of the outstanding capital stock a special cash dividend of twenty-five per cent. be declared. Second, That an equal amount of the unissued authorized capital stock be issued; and Third, that stockholders be given the right to subscribe, at par, to the said additional issue of stock. Whereupon, after discussion, it was on motion duly seconded, and by the affirmative vote of all present Resolved, that the President be and he hereby is authorized and directed to take such action as may be necessary to 6988

6989 carry out the recommendations of the special committee above referred to at an early date."

Extract from the minutes of the Board of Directors of the Coal Sales Company, held November 12, 1913, which appears on Pages 76, 77, and 78 of the minutes.

"In furtherance of the resolution adopted at the last meeting of the Board, accepting the report of the Special Committee appointed to consider the question of future dividends it was

6990 On motion, duly seconded, and by the affirmative vote of all present,

RESOLVED, That a special cash dividend of twenty-five per cent. (or $12.50 per share) be, and it hereby is, authorized to be paid, January 17, 1914, to holders of outstanding full share certificates of this company's capital stock of record at three o'clock p. m., November 17, 1913.

RESOLVED, that an amount of this company's authorized unissued capital stock be issued, at par,

6991 equivalent to twenty-five per cent. of the outstanding full shares as of three o'clock, p. m. November 17, 1913.

RESOLVED, That the privilege of subscribing, pro rata, at par, for the stock to be issued under the foregoing resolution be and it hereby is offered to the full share stockholders of this company, in the amount of twenty-five per cent. of their holdings, who are registered on the books of the company as of three o'clock p. m., November 17, 1913.

6992 RESOLVED, That no stockholder will be entitled to subscribe by a subscription delivered to the Company after three o'clock p. m. on the 14th day of January, 1914, or otherwise than in the way and manner set forth in the proposed circular to the stockholders, hereinafter referred to. Any stock not thus subscribed for at such time may be disposed of by the President for the benefit of the company, at not less than par, and the President is hereby authorized and directed to sell all such unsubscribed stock, for the benefit of the Company, as

hereinbefore stated, at public auction at such times 6993
and in such quantities as he may deem proper.

The President advised that a circular notice to the stockholders, and a notice for publication, had been prepared, to carry into effect the foregoing resolutions. The said circular and advertisement were thereupon presented and read after which, it was

On motion, duly seconded, and by the affirmative vote of all present,

RESOLVED, That the form of proposed circular to 6994
the stockholders of the Company, herewith presented and read, be and it hereby is approved, and the President is directed to distribute it to the stockholders and to advertise the substance thereof in the daily press, in accordance with the form of advertisement herewith submitted.

RESOLVED, further, that power, be, and it hereby is, given to the special committee on dividends to change the wording of the circular and advertisement, or either, if the said committee should deem such change necessary or desirable. 6995

The president stated that as it would be necessary to issue fractional parts of shares in fourths, and as the holders thereof would not be entitled to any dividends, interest, or voting power, and therefore most of such fractional certificates, or scrip, would soon be converted into full shares, he had arranged for the preparation of lithographed certificates, bearing the fac-simile signatures of the President and the Treasurer, but to be validated by the impress of the seal of the Company and a 6996
countersignature; and that he had appointed A. R. Kyle, W. L. Summers, and H. L. Fountain, or any one of them, to countersign the said certificates of fractions of shares."

Q. Now, mention is made in this resolution and in the minutes of the fact that a circular and advertisement were presented to the meeting and read, and a resolution followed approving the circular and advertisement. Do you remember that? A. Yes, sir.

6997 Q. I show you a printed document headed "Lehigh Valley Coal Sales Company Notice to Stockholders," dated November 17th, 1913. Is that the circular to which reference is made in the resolution and in the minutes of the meeting? A. It is.

Mr. Warren: I offer it in evidence.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 16.**

6998 Q. I note the circular provides that stockholders to avail themselves of this privilege, must subscribe for the whole of their allotment, as a subscription for a portion of the allotment will not be considered, do you recall that? A. Yes.

Q. Now, in carrying out the action of the Board of Directors, and the resolutions now offered in evidence these circulars were issued to all stockholders, were they not? A. Yes, sir.

Q. And there was also an advertisement similar, in import, to that? A. An advertisement similar to that
6999 was inserted in a great many papers.

Q. I read from the minutes to illustrate the necessity of the company in making temporary loans, from the meeting of November 28th:

> "The President stated that in order to provide the Company with necessary working capital, he had recently negotiated two temporary loans, one of $300,000 and one of $200,000, from the First National Bank of New York, the rate of interest being 3½% per annum; that these loans were
7000 needed for a few days only and that they had since been paid off."

Q. That is a correct transcript of the minutes, is it not? A. November 28, 1913, is that?

Q. Yes. A. Yes, that is correct.

Q. How many directors are there? A. Seven.

Q. From the minutes of the Company of date February 17, 1914, I read into the record a resolution, namely:

RESOLVED, That the action of the President in 7001
arranging for the sale to the above named stockholders at par, of their proportionate share of the company's new stock,—such stock being issued from the amount remaining unsubscribed at the close of the recent twenty-five per cent. allotment,—be, and it hereby is ratified, approved and confirmed. RESOLVED, that the President hereby is authorized to sell at not less than par, at public auction, or in such other manner, and in such quantities, and at such times as he may deem proper, the balance of the 7002
unsubscribed stock remaining after the issuance of the stock referred to in the last preceding resolution."

Q. Can you tell as to what proportion of the stockholders of the Sales Company did not subscribe for the stock allotment? A. What per cent. did not subscribe? There were less than 8 per cent.

Mr. Machen: You mean in number of shares, 7003
or in number of——

The Witness: I mean in stock.

Q. I mean in interest, without regard to the number of persons holding the stock? A. Yes.

Q. And I note in the same minutes and I will read into the records the following:

"The President stated that the following demand notes of this company given to Drexel & Company, Philadelphia, and to the First National Bank, of 7004
New York, had been paid off: Drexel & Company, date of note September 19, 1913, amount $500,000, date paid January 28th, 1914; October 20th, 1913, amount $200,000, date paid, February 2nd, 1914. First National Bank of New York, date of note September 20, 1913, amount of note $400,000, date paid February 5, 1914."

7005 In the minutes of February 27th, 1914, I read the following:

"The president stated that the demand note dated October 20th, 1913, in the sum of $500,000, given by this Company to the First National Bank of New York, had been paid off on the 26th instant."

Q. This proposition covered by the circulars to stockholders authorized an appropriation out of the accumulated surplus, and the distribution of the same as a
7006 dividend to the extent of 25% of the par value of the outstanding full share capital stock of the Company, first, didn't it? A. Yes, sir.

Q. Second; it authorized the issue of such number of shares of the authorized unissued capital stock as shall equal at par, twenty-five per cent. of the number of full shares of the company's stock that are outstanding at 3 o'clock p. m., November 17, 1913, and the privilege of subscribing to such new stock is given to the full share stockholders of record, in amount equivalent to
7007 25 per cent. of their holdings at 3 o'clock p. m. on November 17, 1913. That is what was offered, wasn't it? A. Yes, sir.

Q. And so it was to be an addition to the capital of the company over and above that previously existing in the nature of a stock allotment? A. It was to be an addition to the outstanding capital stock.

Q. That is what I mean, the authorized capital stock of the company, was, $10,000,000, was it not, under its charter? A. Yes.

7008 Mr. Warren: Now, in connection with that announcement or notice to the stockholders, and the advertisement in connection therewith, I offer in evidence a circular issued by Charles H. Jones and Company, Investment Bankers, 20 Broad Street, under date of New York, November 15, 1913, calling attention especially to the last paragraph in the circular.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 17.**

Q. Now, you mean to say that it was 8 per cent. of 7009
the outstanding capital, less than eight per cent. of the outstanding capital who did not subscribe for the stock allotment, or do you mean to say eight per cent. of the number of stockholders? A. I mean to say there was less than eight per cent. of the number of stockholders who did not subscribe.

Q. Do you know whether the stockholders of the Sales Company have, through inquiries or otherwise, desired to take advantage of this subscription privilege? A. Yes, a great many of them made arrangements when 7010
they were going abroad, to have subscriptions taken care of in their absence, and several of them wired telling us to be sure and reserve their stock and they would send a power of attorney along, and in every case they seemed to be very anxious to take the stock up.

Mr. Warren: I offer in evidence a paper called "Comparisons as of March 28, 1914, on the part of the Lehigh Valley Railroad Stock, with the stock holding list of the Lehigh Valley Coal Sales Company as of April 9th, 1914.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 18.** 7011

Q. You have said when you were called by the Government, I think, that prior to your occupying the position as Secretary of the Sales Company, you were the Assistant Secretary, is that right? A. That is right.

Q. So that you have been either Secretary or Assistant Secretary ever since the organization of the Lehigh Valley Coal Sales Company? A. Yes, sir.

Q. Your office has charge of the list of stockholders, 7012
the stock certificate book, the transfer book, and the other records of the Company showing the stockholders and the number of sales day by day, does it not? A. Yes, sir.

Q. How actively has the stock of the Lehigh Valley Coal Sales Company been dealt in since its organization? A. There have been periods when there has been great activity. It has been dealt in, I might say, practically every business day, since we began business, except, pos-

7013 sibly, there might be a few days in midsummer when there are no transactions, but we have had stock transferred practically every day since we opened up, except for a little period now and then when there was a lull.

Q. At times to what extent has the transferring of your stock occupied your clerical staff in your office? A. There have been times when we have been utterly swamped, we have had to work until 10, 11, and even 1 o'clock in the morning to get up the current day's transfers of the stock.

7014 Q. Have the transactions in the stock created a number of new stockholders in the Lehigh Valley Coal Sales Company, say, the situation to-day as compared with that of the early part of 1912, or in other words, in the last two years? A. Yes, there are a number of new stockholders who were not stockholders when we first began.

Q. And do they appear on the exhibit which is Sales Company Exhibit No. 15, altogether? Do they all appear there? A. Yes, sir; but it does not begin to show all the new stockholders.

7015 Q. No. 15 does not show the new blood, so to speak, in the Lehigh Valley Coal Sales Company, in the stock holding list? A. No, sir; there may be some new stockholders, but that is not the purport of the list.

Q. Have you made up a memorandum showing the changes in the stockholders' list between certain dates? A. Yes, sir.

Q. Is this the memorandum you made up? A. That is the memorandum.

Mr. Warren: I offer it in evidence.

7016 Marked **Lehigh Valley Coal Sales Company Exhibit No. 19.**

Q. Your comparisons are made with the railroad stockholders' list as of March 28th, 1914, are they not? A. With the Lehigh Valley Railroad, yes, sir.

Q. Calling your attention to the statement in the Government's petition, page 7, that the outstanding stock of the sales company, is, $7,576,000—151,520 shares, at

$50 each, what have you to say as to the correctness of 7017
those figures as representing the outstanding capital stock of the Sales Company at any time? A. The outstanding capital stock never reached those figures. It is less than that.

Q. Calling your attention to the statement in the Sales Company's answer as to the outstanding capital stock of April 9, 1914, page 2, of the answer, is it correctly stated there as $7,542,500—150,850 shares at $50 each? A. Yes, sir.

Q. Have you verified the statement appearing upon 7018
page 3 of our answer starting with the constant changes in the stockholding list as between October 10th, 1913, and April 9th, 1914, and are they correctly stated there? A. Yes, sir, they are correctly stated.

Q. And have you verified the statement as to the number of stock accounts registered in the name or represented by trustees, guardians and executors, including stock in the names of decedents, as of April 9, 1914, and are the figures there stated correct? A. They are correct.

Q. And as to the number of women who are stock- 7019
holders out of the total number of shareholders? A. Yes, sir, those figures are correct.

Q. Will you state whether or not there have been, at all times, foreign stockholders, so called, as well as domestic stockholders of your Company? A. Yes, there have always been foreign stockholders.

Q. Will you tell us, please, the practice and the participation of you as Treasurer, and Mr. Summers, as Auditor, as to the disbursements of money, whether they are for freight bills or for any other purposes, the dis- 7020
bursement of all moneys by the Sales Company, tell us your practice? A. The bill, properly approved by an executive officer, comes to the Auditor, and he verifies the bill so far as possible, and prepares the check-voucher in payment thereof, which is then handed to the Treasurer, and, in due course, is signed by him and mailed to the person to whom the bill is payable.

Q. Then both of you are familiar equally, the one with the other, with all transactions involving the payment

7021 of funds, both the Auditor and the Treasurer? A. Yes.

Q. Turn to page 13 of the answer. Did you furnish the figures, or have you verified them, whether you furnished them or not, as to the sums paid by way of rental for storage plants at South Plainfield, and other places appearing upon pages 13 and 14 of the Lehigh Valley Coal Sales Company's answer? A. Does that relate to rentals only or to——

Q. Turn to the answer and you will find it refers to rentals, then taxes, and then to the maintenance of the

7022 plant, if there were expenditures appearing? A. I have verified all those figures relating to rentals, maintenance, and payments of taxes; and they are correct.

Q. Now, you also paid insurance on those plants, did you not? A. Yes, sir.

Q. And the insurance premiums were paid by your Company, were they not? A. Yes, sir.

Q. Turning to page 15, towards the bottom of the page, where we speak of storage plants other than at South Plainfield, namely, Hudsondale, Ransom, and Wende, have you verified the figures there? As to pay-

7023 ment both by way of rentals and taxes? A. No, I have not.

Q. What knowledge, if any, have you as to who the stockholders are of the Lehigh Valley Railroad Company, or the Lehigh Valley Coal Company, have you any? A. I have no knowledge.

Q. Have you ever had, or has your office ever had, since the organization of the Sales Company? A. No, sir.

Q. Nor have you any knowledge as to the persons who

7024 did or did not hold unitedly a majority of stock in the railroad or in the coal company? I mean aside from this list which you saw the other day? A. No knowledge except from the list of March 28th, 1914.

Q. Which I asked you to examine the other day for the purpose of making a comparison and testify in this case, did I not? A. Yes, sir.

Q. I mean aside from that? A. Aside from that I have no knowledge whatever or any means of finding out.

Q. Have you ever had any knowledge? A. No, sir. 7025
Q. Or any concern with that matter in any way? A. No, sir.
Q. Or with any of the other defendants in this case other than the Sales Company? A. No, sir.
Q. Or in any other Company other than the stockholders of your own company? A. No, sir, I have no knowledge or connection with any other company whatever.
Q. Now, as Secretary, you have attended the meetings of the directors of the Sales Company? A. Yes, sir.
Q. Prior to your taking the position of Secretary, did 7026
you attend the meetings of the Directors? A. No, sir.
Q. But since that time, which was some time in September 1912, was it not? A. Yes, sir.
Q. Since that time you have regularly attended all meetings of the Board, have you not? A. I have attended every meeting.
Q. With what are the meetings concerned; what do they confine themselves to? A. They are concerned with conducting the business of the Lehigh Valley Coal Sales Company, with taking up propositions and discussing them, passing the necessary resolutions to enable the 7027
President and other officers to carry out the terms of the resolutions in furtherance of the conduct of the Lehigh Valley Coal Sales Company's business.
Q. Any other thing than that subject of discussion or action at the meetings of the board? A. You mean other than the Lehigh Valley Coal Sales Company?
Q. Other than what I asked you? A. No, nothing, that is all. No business, or mention, in fact, made of the business of any other company.
Q. When your company started out in business, what 7028
offices did it secure to transact its business in? A. It secured offices in the West Street Building, 90 West Street, New York.
Q. It had its principal office for the purpose of service and to comply with the laws of New Jersey, at 15 Exchange Place, Jersey City? A. Yes.
Q. But its principal office where it transacted the volume of its business was 90 West Street, New York? A. That is correct.

7029 Q. And has been ever since? A. It has been ever since.

Q. What floors did it occupy when it took possession? I mean was it all of the 9th floor, or practically all of it? A. It took possession of most of the 9th floor. The Lehigh Valley Coal Company had a part of the ninth floor at that time.

Q. What arrangements were made with the Lehigh Valley Coal Company with reference to a transfer of its lease? A. The West Street offices now occupied by the
7030 Sales Company were leased originally May 5, 1910, by the Lehigh Valley Coal Company from the West Street Improvement Company, rental $13,000 per annum.

Q. You have the lease right here, haven't you? The original lease? A. Yes sir.

Q. Go ahead. A. On February 29, 1912, The Improvement Company——

Q. That is the owner of the building? A. The owner of the building,—— The Lehigh Valley Coal Company and the Sales Company agreed that the lease should be assigned by the Coal Company to the Sales Company,
7031 and part of the offices should be sublet to the Lehigh Valley Coal Company.

Q. By the Lehigh Valley Coal Sales Company? A. By the Lehigh Valley Coal Sales Company.

Q. Was the lease that had theretofore stood in the name of the Lehigh Valley Coal Company as lessee transferred to the Lehigh Valley Coal Sales Company? A. Yes, sir.

Q. In writing? A. It was assigned in writing.

Q. And you have the assignment there? A. Yes, sir.

7032 Q. Now go on. A. The Coal Company was charged a rental of $214.00 per month for the offices subleased.

Q. How many were there sublet? A. Rooms 901 to 906 inclusive.

Q. Go on. A. If this rental was based on the floor space of those offices as given by the Cruickshank Company, the agents of the building, that is 1880 square feet, it would be at the rate of .11382 cents per square foot per month, or $1.36584 per square foot per annum. On Febuary 9th, 1914, a new lease was made between the

Lehigh Valley Coal Sales Company and the West Street 7033
Improvement Company.

Q. What was the term of the original lease of 1912 that you have spoken of that had been made between the West Street Improvement Company and the Lehigh Valley Coal Company? In other words did it expire in 1914? A. Yes, it expired in 1914.

Q. So then the occasion of making a new lease was the expiration of the old lease that had been assigned to your company when you went in there? A. Yes that was it.

7034

Q. Now go on. A. On February 9, 1914, a new lease was made between the Lehigh Valley Coal Sales Company and the West Street Improvement Company at $13,000 per annum, for five years from May 1, 1914.

Q. Now, that lease was made by the owners of the building, the ninth floor of which you occupied, for the period you have spoken of from May 1st, 1914, for five years? A. Yes, sir.

Q. Now, how long did the Lehigh Valley Coal Company occupy those offices, on the ninth floor under their 7035
sublease of which you have spoken? A. They occupied them until the end of May, 1913.

Q. Did they get out then? A. Then they moved to other quarters.

Q. Did they pay the rent, the amount which you have given us, from March 1, 1912, until the end of May, 1913, when they vacated? A. Yes, sir, they paid a monthly rental of $214.00.

Q. How did the rent compare, figuring it on per square foot of space with the rent you paid to the West Street Improvement Company after you took the assign- 7036
ment of the lease that had been made to that Company with the coal company prior to your organization? A. It was a higher rental. The Coal Company paid the Sales Company a higher rental.

Q. Higher? A. Yes, sir.

Q. Higher? A. Yes, higher rental.

Q. A higher rental than what? A. It was a higher rental in proportion than the Sales Company paid to the Building Company for its offices.

7037 Q. In other words, you charged the Coal Company more per square foot than you paid per square foot for the space which the Sales Company occupied? A. Yes, sir.

Q. And there was no discriminatory practices in the matter of your collection of your rent from the Coal Company was there, during the time they were there in these few rooms, you made them pay promptly, didn't you? A. Yes, they paid each month.

Q. The full amount of rental? A. The full amount of

7038 $214.00.

Q. That was the amount of rental, wasn't it? A. Yes, sir.

Q. And they were there from the first of March, 1912, to the first of June, 1913? A. Until the end of May, 1913.

Q. Now, what floor space do you occupy there? Isn't it the entire ninth floor? A. Yes, the entire ninth floor.

Q. How many offices are there in the ninth floor of that building? A. There are 20.

Q. And will you tell us, please, how they are occu-

7039 pied? With what officials, and what organization have you in the way—you have your president's offices, and what? A. There is the President's office, the Vice-President and General Sales Agent's office, the General Eastern Sales Agent's Office, the Auditor's offices, the offices of the Secretary and Treasurer.

Q. Stenographer's rooms, I suppose, too? A. Yes, I think those are all of the officers which occupy the rooms.

Q. And where is your clerical force, where do they

7040 work, the men that do the work for you and do the work for Mr. Summers, that is, the Auditor? A. They work in, and are included in the general offices of those respective officers.

Q. And how large a force are there of the employes of the Sales Company, devoted exclusively, as I understand everybody is over there, to the Sales Company's business? A. I could only make an estimate of that, but I should say between 75 and 100. That is the best of my recollection.

Q. You have, I assume, quite a considerable number 7041
of stenographers and stenographeresses, haven't you, over there? A. There are quite a few stenographers, and in some instances lady stenographers, also.

Q. Can you tell me when Benjamin N. Duke, referring to Sales Company Exhibit No. 14, acquired his holdings in the stock of your company? A. Most of his stock was acquired in December, 1912. He also acquired some by subscription in January, 1914.

Q. How about Kean, Taylor & Company? A. They acquired some stock in March, 1912, but the bulk of their 7042
stock was bought in 1913. They also were subscribers to the recent stock allotment.

Q. I understood you to say that they were not stockholders in the Lehigh Valley Railroad, at any rate, as the stockholding list disclosed on March 28th, 1914? A. That is correct.

Q. Then if they acquired the stock since March 1st, 1912, it is safe to assume that they purchased it from some stockholder of the Sales Company, if they were not stockholders at that time of the railroad, is it not? A. That is a fair assumption. 7043

Q. Now, take Howard T. King, who has 2,733 shares, and who, you said, according to the stockholding list of the railroad March 28th, owned no stock, at that time of the railroad. How did he acquire his stock in the Sales Company? A. He acquired most of his stock in the calendar year of 1913. He also got some by subscription in January, 1914, and has bought some since.

Q. Do you happen to know his business? A. No, I do not.

Q. Do you know the business of Kean, Taylor & Com- 7044
pany? A. I believe they are bankers and brokers.

Q. Do you know the business of Benjamin N. Duke? A. I believe he is the tobacco man.

Q. Now, I assume it will take too much time for you to undertake to follow the purchases of individuals of the stock of the sales company since 1912, who do not appear to be stockholders of the railroad under the list of March 28th. I mean getting down into what I would call the small stockholders. It would be an interminable task, wouldn't it? A. It would be a tremendous job.

7045 Q. How many stockholders are there altogether of the Sales Company as appears in your list? Let's take the list which the Government offered in evidence, which is dated April 9th? A. On April 9th, 1914, there were 3,582 full share stockholders. There also were a number of stockholders who held only fractions of shares.

Q. Can you tell me in how many states there are stockholders of the Sales Company, individual men or women owning the stock of your company? A. In how many states of the United States?

7046 Q. Yes. A. No, I have never gone into that feature of it. They are scattered all around.

Q. That is what I mean. A. All over the United States and Canada, and possibly in Mexico, and certainly on the continent of Europe.

Q. And there are a considerable number of stockholders other than residents of the City of New York? A. Yes, certainly. Oh, yes, a great many.

Q. Was George F. Baker, Jr. a stockholder in your company as of April 9, 1914? Can you turn to the list and tell me? A. Yes, he is.

7047 Q. How many shares did he own? A. 250 shares.

Cross-Examination by Mr. Machen:

Q. You say it is the practice of your company to send out proxies to be used at each meeting of the stockholders? A. Yes, sir.

Q. That has been the practice since the company was incorporated? A. It has been the practice since just before our first annual meeting.

Q. How many meetings have you had altogether? A.

7048 Annual meetings?

Q. Annual or special meetings of stockholders? A. We have had two.

Q. Two annual meetings and no special meetings? A. No other stockholders' meetings except annual meetings.

Q. How long before the meeting do you send out a request for the proxies? A. We send them about three weeks before the meeting.

Q. You send out the form of proxy to be signed by the stockholder with the request that he sign it if he cannot

be present and return it to you? A. Yes, sir, and we also send a printed notice of the annual meeting as well. 7049

Q. A formal notice of the meeting? A. Yes.

Q. Do you enclose with the proxy a stamped envelope for return to you? A. Yes, sir.

Q. Are the names of the persons who act as proxies stated in these forms of proxies? A. Yes, sir.

Q. And they were in each case, you said, Mr. G. N. Wilson, Mr. Horatio G. Lloyd, and Mr. Francis L. Hine, is that correct? A. Yes, sir.

Q. Mr. Wilson, I believe, is now president of the Coal Sales Company? A. Yes, sir. 7050

Q. And Mr. Francis L. Hine, is a director, is he not? A. Yes.

Q. Do you happen to know if he is a stockholder of the Lehigh Valley Railroad or not? A. No, I don't know anything about it.

Q. Look through this list and tell us if he is and how many shares of common stock of the railroad company he holds? A. He is reported as the holder of 2,000 shares of stock.

Q. Two thousand shares of the common stock of the railroad company? A. Yes, sir. 7051

Q. Mr. Hine is President of the First National Bank of New York, isn't he? A. Yes, sir.

Q. And you say that these proxies were actually voted by Mr. Wilson? A. Yes, sir.

Q. The other two gentlemen not being present at the meeting? A. I don't believe they were present.

Q. How many shares, altogether, were voted by these proxies? How many by stockholders present in person, or voting by other proxies designating other persons as their representatives? A. At the meeting of January 26th, 1914? 7052

Q. Both at that time and at the meeting of 1912. A. At the meeting on January 26, 1914, the number of shares represented by proxies were 91,268.

Q. And how many voted altogether at the meeting? A. The total number voted was 91,444.

Q. How about the meeting in 1913? A. In the meeting on January 27, 1913, there were 89,297 shares voted by proxy.

7053 Q. That is by these official proxies sent out by the Company? A. No, that took in other proxies also.

Q. That was not the question that I asked you. I wanted to know how many voted by official proxies? A. At the meeting of January 27th, 1913, the number of shares voted on proxies which were sent out by the Coal Sales Company, were 89,238.

There were also other proxies voted for 59 shares, and 161 shares were voted personally by stockholders.

Q. The prices on Sales Company stock fluctuated
7054 rather rapidly did they not? A. For a good many months they have been very stable; at times there is quite a good deal of fluctuation, particularly so in 1912.

Q. You spoke of the headquarters of the New York Curb Association being at 25 Broad Street? A. Yes, sir.

Q. State, if you know, why the association is called the Curb Market Association? A. I don't know why it is called the Curb Market Association.

Q. You gave out a table showing the number of Lehigh Valley Coal Sales Company stockholders, who, at
7055 the time of the increase of capital stock of the company, failed to subscribe to their quota, and you did not tell us what was the proportion of the total new stock then offered for subscription, which was left unsubscribed by the stockholders. Can you give me this information, speaking of the increase of the capital stock by the Sales Company sometime after its organization.

By Mr. Warren:

Q. In January, 1914?

Mr. Machen: January, 1914.

7056 The Witness: You want to know the number of shares that are still unsubscribed, that is, after allowing for the belated stockholders to whom the Board authorized subscriptions of the respective amounts due them, you mean that, do you?

Q. Yes. A. The number of shares of stock still unsubscribed for are 373 shares.

Q. They have not been issued at all? A. They have not been issued, of the second lot.

Q. Will you look at the list of Lehigh Valley Railroad stockholders of record on March 28th, 1914, and tell us how many shares of Lehigh Valley Railroad Company common stock were held by Mahlon S. Kemmerer? A. 220 shares. 7057

Q. What was his address? A. Mauch Chunk, Pennsylvania.

Q. What other members of the Kemmerer family are on this list of stockholders of common stock of the Lehigh Valley Railroad Company, as of the same date, and what are their addresses and the number of shares held by each? A. Annie L. Kemmerer, Gertrude L. Kemmerer. 7058

Q. Give the addresses. A. Annie L. Kemmerer, Mauch Chunk, Pa., 39 shares; Gertrude L. Kemmerer, Mauch Chunk, 86 shares; John L. Kemmerer, Mauch Chunk, Pennsylvania, 84 shares; Mahlon S. Kemmerer, guardian of John L. Kemmerer and Gertrude L. Kemmerer, Mauch Chunk, Pennsylvania, 704 shares.

Mr. Boles: Do you know who they are? A. No, I don't know anything about them whatever. 7059

Q. Now, look at the Sales Company list and tell us the number of shares held by the same people on April 9, 1913? A. Annie L. Kemmerer, payable to estate of Annie L. Kemmerer, M. S. Kemmerer, executor, P. O. Drawer C., Mauch Chunk, Pennsylvania, three shares; Gertrude L. Kemmerer, Mauch Chunk, Pennsylvania, P. O. Drawer C, ten shares; John L. Kemmerer, Mauch Chunk, Pa., P. O. Drawer C ten shares; Mahlon S. Kemmerer Mauch Chunk, Pa., P. O. Drawer C twenty-eight shares; Mahlon S. Kemmerer, guardian of John L. Kemmerer and Gertrude L. Kemmerer, Mauch Chunk, Pennsylvania, P. O. Drawer C, eighty-eight shares. 7060

Q. Will you look at page 13 of the answer of the Coal Sales Company where we find the following statement as to the lease of the storage plant at South Plainfield, N. J. "The money expended in repairs and maintenance in that year amounted to $6,224." Do you know what the nature of the expenditures for repairs and maintenance were? A. I do not.

7061 Q. How are you able to tell us whether they are necessary annual repairs which might be required each year, or whether they were for extraordinary repairs which might not be required to be repeated for a generation? A. Those figures were gotten from the Auditor in connection with other figures which I have myself from my own records. I don't know anything about the nature of the repairs.

Q. All that you know is that $6,224 was spent in that year, or rather, was reported as having been spent in
7062 that year, by your company on the property? A. Yes.

Mr. Warren: He knows more than that. He is the Treasurer and knows that he paid the check for them.

The Witness: Certainly.

Q. And your company paid that amount but you don't know what the nature of the expenditure was? A. Yes, those records are not now lodged in my office.

Q. In the same way as to other statements as to re-
7063 pairs, and so forth, set out on the pages 13 and 14 of the answer of the Coal Sales Company? A. Yes; well, I spoke only of the maintenance figures; as to the other figures, the taxes and so on, I have some knowledge of that.

Q. Yes, but so far as the figures on maintenance and repairs are concerned, the answer which you have given with reference to the lease at South Plainfield, would be equally applicable to the leases at other points? A. Yes, sir.

Q. The Lehigh Valley Railroad Company also has an
7064 office in the building at 90 West Street, has it not? A. I don't know of any. If it has, I have never seen it.

Mr. Boles: I will concede for the record that the Valuation Bureau of the Lehigh Valley Railroad which was organized to take care of all matters under the Federal Valuation Act, is located in 90 West Street, or was until a few days ago.

Mr. Warren: What floor?

Mr. Boles: I don't know.

Q. Does the D. L. & W. Railroad Company have an office at 90 West Street? A. I believe they have, yes, sir. 7065

Q. And the D. L. & W. Coal Company? A. So I have heard.

Q. Well, as a matter of fact, you know it? A. I have never been up there. I don't know, only by hearsay.

Q. You have seen some of the people there? A. Really, I don't know any of them.

Re-Direct Examination by Mr. Warren: 7066

Q. The National Surety Company occupy offices in that building, too, don't they? A. I have noticed their name on the elevator doors, on the third floor.

William L. Summers, a witness called in behalf of the defendant, Lehigh Valley Coal Sales Company, being first duly sworn testified as follows:

Direct Examination by Mr. Warren: 7067

Q. You have already testified as a witness for the Government that you are the auditor of the Lehigh Valley Coal Sales Company, Mr. Summers? A. Yes, sir.

Q. And you have told us for what length of time you have been General Auditor? A. From the incorporation of the Company Auditor, not General Auditor.

Q. You are familiar therefore, with the accounts of the Company from its organization to the present time? A. I am.

Q. And in charge of the accounting for it? A. Yes, sir. 7068

Q. I show you a memorandum headed "Accounts Purchased from Lehigh Valley Coal Company." Did you prepare that, and is that a correct statement of the accounts purchased? A. Yes, sir, it is.

Q. And the amount paid to the Lehigh Valley Coal Company therefor, the payments appear on the second sheet? A. Yes, sir.

7069 Mr. Warren: We offer these two sheets, and I ask that they be identified as one exhibit.

(Marked **Lehigh Valley Coal Sales Company Exhibit No. 20.**)

Q. Now, the first item represents the coal stocks purchased. That covers, as I understand it, the coal in certain storage plants? A. The coal in certain storage plants, and also in transit.

Q. And also in transit? A. Yes, sir; total value of the
7070 anthracite coal purchased.

Q. Now, then, where the next item starts, it says, "General Sales Agency, New York," and then various other places. Now, those various items totaling $6,348,518.38 represent what? A. They represent the amount due for coal sold by the respective agencies.

Q. By what company? A. By the Lehigh Valley Coal Company.

Q. Which you purchased? A. Which we purchased, as of March 1st, 1912.

7071 Q. Under what arrangement as to guarantees, if any? A. The Coal Company guaranteed these accounts.

Q. And you paid cash for them just as they appear on the books? A. Yes, sir.

Q. As of March 1st? A. Of March 1st.

Q. With that understanding as to any that you could not collect? A. It finally disclosed that any accounts uncollectable, the Lehigh Valley Coal Company would make the amount good.

Q. Now, the next three lines are headed "Advance insurance coal properties' stock and eastern cargo coal."
7072 Will you tell us what that represents? A. That represents insurance on which the premiums had been paid in advance by the Lehigh Valley Coal Company.

Q. On what? A. On the coal property, the coal stocks and coal consigned in eastern cargoes.

Q. What do you mean by coal properties? A. The storage plants.

Q. Oh, on the storage plants? A. Yes.

Q. In other words, the premiums that were to go beyond March 1st, 1912? A. Yes.

Q. Then I notice that there is an item here for freight. 7073
Please explain that. A. That represents the amount of freight that has been advanced by the Lehigh Valley Coal Company on Jeddo and Highland coal consigned to various stocking points.

Mr. Machen: That is Markle coal?
The Witness: That is Markle.

Q. What are "Advances to salesmen"? A. That represents advances to traveling salesmen. A salesman goes out on the road, and we advance $100, and that 7074
stands as amount advanced to salesmen as from March 1st, by the Lehigh Valley Coal Company.

Q. And this next amount, "Working Fund, Retail Yards"? A. At the retail yards various small amounts, $5 and upwards, advanced to the man in charge, to make change.

Q. And what does "Bituminous coal in stock" mean? A. That represents bituminous coal in stock, chiefly in the western yards, carried there as accommodation more than anything else. 7075

Q. What was the arrangement under which you purchased that stock, I mean to say? A. At the value represented on the books of the Lehigh Valley Coal Company.

Q. Now, I notice certain credits here as "Less the following liabilities." Will you please explain those four items there? A. The Lehigh and W.-B. Coal Co. Exchange Account represents the value of coal on which the Lehigh Valley Coal Company was indebted to the Lehigh & Wilkes-Barre Coal Company as of March 1st, 7076
received from them in excess on exchange account, and that amount due the Lehigh & Wilkes-Barre Coal Company.

Q. And you received that exact amount? A. We received that exact amount from the Lehigh Valley Coal Company.

Q. How about the "Unpaid freight"? A. That represents freight which had been calculated in taking the value of the coal at certain stocking points where the

7077 bills had not yet been received, and were carried on the books as unpaid. We took those over.

Q. Suspense claims? Freight suspenses? A. That represents various small amounts, small claims, made on behalf of consignees and when the claims were finally collected, the consignees received credit. The suspense claim is of almost a similar nature, similar little items in dispute which were carried in suspense appertaining to sales.

Q. Now, turn to the next page, there you have the
7078 grand aggregate of the various accounts purchased, as you call them, of the Lehigh Valley Coal Company, aggregate $8,206,467.51. Do you notice that figure? A. Yes, sir.

Q. Now, you said that they were paid by voucher. Can you tell us when those vouchers were paid? A. They were all paid—issued by voucher in March, 1912. I can't say the date of that. The date they were paid, but the vouchers went to the Treasurer for payment in that month. The first payment, I think, the $7,000,000
7079 was paid on the first of the month, and the $500,000, that was probably paid a few days later, and the next item, the $1,953.01, $1,664.54, cover the insurance bills which they paid.

Q. When were they paid? A. They were all issued in March.

Q. Well, the date? A. I can find out the date they were paid by the Treasurer.

Q. Make a memorandum of it, and do so. A. Yes.

Q. Now, in addition to that you have miscellaneous liabilities paid by Lehigh Valley Coal Company, April
7080 15th, 1912. What does that represent? A. That represents the difference between those two classes of items shown at bottom of the first sheet and was the amount as due by the coal company to the Sales Company, the liabilities in this group being in excess of the assets. I show that $2,218.65 on the first sheet because that we collected from the Coal Company.

Q. Calling your attention to page 8 of the Sales Company's answer, the first figures and prices are taken from the Government's petition, page 16. The three

other columns, that is the per cent. of the railroad's 7081
shipments to the various points on the total shipments, and then the tonnage of the Sales Company's shipments, and then the per cent. of their shipments are all your work, are they not? A. Yes, sir.

Q. And have you verified that statement as to those percentages, and as to your shipments by the Lehigh Valley Railroad during that month so that you can say that they are correct? A. Yes, sir.

Q. So that what is meant by the expression "Total shipments 856,443" at the end of that statement—— 7082
A. (Interrupting.) That was the total shipments for all points.

Q. By what company? A. By the Lehigh Valley Coal Sales Company.

Q. And the shipments to Buffalo, as stated, 284,702 tons, cover what character of shipments? A. Coal consigned to Buffalo for reshipment via the lake points to Canada, points in Ohio, Indiana, Michigan, and for Buffalo locally.

Q. Can you give me the distribution of that figure 7083
284,000? A. For lake shipments, 182,083; for Canada, 21,734; for Ohio, Indiana and Michigan, 38,945; for Buffalo, 41,940.

Mr. Warren: I offer in evidence as an exhibit that statement as appears on page 8 of our answer.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 21.**

Q. Have you verified the table of operators, collieries and tonnages covering shipments via various railroads 7084
appearing upon page 9 of the Sales Company? A. I have, yes, sir.

Q. First of all, you took your total tonnages from the mine inspectors' report for the year 1912, did you not, the last column, at least? A. No, sir.

Q. How did you take them? A. I took those totals direct. All these figures were furnished me by these operators themselves.

7083 Mr. Warren: Well, I have already offered the mine inspectors' report for the year 1912, and ask that the total tonnages of those operators, as they appear upon pages——

Mr. Machen: I will admit that those figures, those totals check with the report of the Pennsylvania Department of Mines.

Mr. Warren: That is what we call the mine inspector's report.

Mr. Machen: With the figures given in that
7086 report for the year 1912 of the Pennsylvania Department of Mines.

Q. You have verified the shipments over the various roads designated in the previous columns, and the last one headed "Total," have you? A. I received those distributions from the operators themselves, yes.

Mr. Warren: We offer in evidence this copy of that statement.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 22.**

7087 Mr. Warren: I offer in evidence from the Evening Post of this date, Tuesday, July 28th, 1914, among the curb quotations, today's closing prices, appearing among others Lehigh Valley Coal Sales Company today, bid 165; asked 175.

I next offer in evidence the list of collieries appearing upon page 10, the facts as to those collieries appearing in the mine inspector's reports for the year 1912.

Mr. Machen: I reserve the right to correct any
7088 of those names.

		Tons
Wyoming,	McCauley Coal Co., Pickaway	9,869
"	Eissinger Bros. Co., Inc., Healy	59,050
"	Wilkes-Barre Anth. Coal Co., Hillman Vein	75,667
"	Rissinger Bros. Co., Inc., Troy	19,081
Lehigh,	J. S. Wentz & Company, Hazle Brook	89,799
"	Hazle Mt. Coal Co., Hazle Mount	86,032
"	Harleigh Brookwood C. Co., Harleigh	64,709
"	Evans Colliery Co., Evans Washy	8,809

Q. Is it part of your duty to examine and audit the freight bills which are rendered by various railroads over which your company ships anthracite and bituminous coal? A. Yes, sir. 7089

Q. And do you initiate the voucher which goes to the Treasurer after such investigation and examination? A. That is the voucher in favor of the Lehigh Valley Railroad Company or if there are any bills paid in the east. In the west all bills are paid by the sales agents.

Q. Your general sales agent out there? A. Yes, but on shipments over the Lehigh Valley Railroad, direct shipments to points on the line of the Lehigh Valley Railroad, those tolls are paid weekly. That is, I say weekly, they are paid four times a month. The bills are made out for the 7th, 14th, 21st, and the last day of the month, and the railroad company issues a draft which is received by us about three to four days after the receipt of the bills. 7090

Q. Is there any difference in your conduct with reference to freight bills of one railroad as compared with freight bills of another railroad in the matter of your treatment of them, examining them and providing for their being vouchered by the Treasurer? A. No, sir, all bills received in our office are checked and verified with the tariff. 7091

Q. What I mean is, do you understand they are paid substantially under the same practice? I mean as to the time after the commodity has been carried and the time that payments are made? A. Yes, sir.

Q. Do you have to do with the separation of the accounts and the vouchering of coal purchased by the Lehigh Valley Coal Sales Company from everybody? A. Yes, sir. 7092

Q. All purchasers? A. Yes, sir.

Q. You may tell us, please, your practice in the matter of coal which you have purchased from the Lehigh Valley Coal Company since March 1st, 1912. What is the routine of your office as to that? A. Well, we get a daily report from each colliery. Bills are accumulated, and at the end of the month a detailed statement is received from the Lehigh Valley Coal Company showing the total

7093 shipments from each colliery by sizes, each month, which is checked against the daily reports which we receive from the collieries.

Q. By your own report? A. By our own report, yes.

Q. Then what? A. Then the prices, the f. o. b. figures, are received from the statistician, and the amount is computed and a bill is rendered by the Lehigh Valley Coal Company, which on receipt, is verified with the figures as we have them.

Q. When you say statistician, that is what you now
7094 call the Armstrong Bureau? A. Yes.

Q. And are your payments in accordance with the contract of March, 1912? A. Yes, sir. Part payment is made on the 12th of each month, and final payment on the 20th of each month.

Q. In other words, you pay off part of the coal on the 12th, and the balance later in the month? A. Later in the month.

Q. The Government says, page 25 of its petition, that the Lehigh Valley Coal Sales Company has continued to purchase coal from substantially the same independ-
7095 ent operators, and that statement is preceded by a list of producers of anthracite coal, and gives the date of certain contracts, which it avers were entered into between the Lehigh Valley Coal Company and these independent operators. Is it a fact that you have purchased coal from that list of operators, and I now show you the list as it appears in the Government petition? A. We are not purchasing coal from all these operators, no.

Q. The Government has offered in evidence the cor-
7096 respondence under which the Lehigh Valley Coal Sales Company has purchased coal since June 1st, 1913, from Coxe Brothers & Company, Incorporated. As to that coal you make payments in what way? A. Direct to Coxe Brothers & Company.

Q. Incorporated? A. Yes, sir.

Q. And is that coal paid for by the 65 per cent. prices, obtaining at tidewater the previous month? A. The month in which the coal was shipped.

Q. Yes. A. Yes, sir.

Q. That is, you pay in April for shipments made in March, do you? A. Yes, sir, the payments are made direct to Coxe Brothers & Company. 7097

Q. What would you say as to the expense or cost of merchandising the Markle coal as affected by its being incorporated into the joint business of your company in handling a large volume of coal by purchase or otherwise? A. By handling it ourselves it would have a tendency to reduce our cost of selling by reason of the increased tonnage which we are able to handle.

Q. Well, isn't the cost of the handling of the Markle coal materially reduced because of the Lehigh Valley Coal Sales Company selling what coal it does sell in connection with the Markle coal? A. Considerably, because the bulk of the tonnage is the Lehigh Valley Coal Sales Company coal, not the Markle coal. 7098

Q. In other words, you can more advantageously handle the Markle coal, having a large volume of tonnage of purchased coal to handle, than you could if you attempted to establish agencies and sell Markle coal alone? A. Undoubtedly.

Q. In connection with that matter, the Government asked you to furnish it, did it not, and when I say the Government I mean the very agreeable gentleman who represents the Government here, a statement of what was the estimated profits to the Sales Company of handling the Markle coal. You recall that circumstance, do you not, when you were on the stand? A. Yes, sir. 7099

Q. And did you furnish them, as best you could, an estimated statement of that? A. I did. I sent a statement to Mr. Machen giving the estimated figures as to the best of my knowledge I was able to figure them out.

Q. Now, the matter of the freights and the payments of the freights, you pay the freights of the Lehigh Valley Railroad Company in the same manner, for coal which you sell on commission, as you do for coal which you purchase from the Lehigh Valley Coal Company, do you not? A. The amount of freight on Markle Company's coal is included in the draft which the railroad company draws covering the shipments by the Lehigh Valley Coal Company. The Railroad Company doesn't 7100

7101 differentiate between Markle coal and the Lehigh Valley Coal Company's coal.

Q. Does it between Pardee & Company's coal? A. No.

Q. In other words, all the coal which you ship over the Lehigh Valley Railroad Company, all freight bills for it are rendered by it as you have described? A. Yes, sir.

Q. Is this the statement which you furnished the Government? A. It is.

7102 Q. I assume from what you just said you would not undertake to say it was exact, but it was the fact—— A. I think it is the best approximation I could make, and I believe it is reasonably correct.

Q. By way of an estimate? A. By way of an estimate.

Mr. Warren: I offer it in evidence.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 23.**

7103 Q. In connection with the payment on freights to the Lehigh Valley Railroad Company, have you prepared, at my request, a list of the items and amounts of demurrage which you have paid the railroad company since March, 1912? A. Yes, sir.

Q. And the places at which those accounts accrued? A. Yes, sir.

Mr. Warren: I offer it in evidence.

Marked **Lehigh Valley Coal Sales Company No. 24.**

7104 Q. You paid freight, that is to say, payments of freight pass through your office for all railroads—the Lehigh Valley Railroad, of course? A. All the railroads that we ship coal prepaid; to all prepaid points.

Q. Can you give me the name of the railroads which you paid freight to other than the Lehigh Valley Railroad? A. The Pennsylvania Railroad, all the western roads, the Atchison, Topeka & Santa Fe, the Baltimore & Ohio.

Q. Are you now giving me the list of the freights as 7105
paid by the Sales Company draft, or those which are paid through your own office? A. I am giving those paid by the Sales Company's agents.

Q. First of all, I would like to ask you what other railroad companies do you pay freight to other than the Pennsylvania Railroad and the Lehigh Valley Railroad, in your own office? A. Why, to the Lehigh Valley Railroad for freights to——

Q. Aside from the Lehigh Valley Railroad and Pennsylvania Railroad, you have spoken of those before? A. 7106
Well, shipments by Lehigh Valley Transportation Company.

Q. For lake shipment? A. Yes, for lake shipment.

Q. Yes. A. And of course the Pennsylvania Railroad. That covers coal bound for Coalport, Trenton, for reshipment, and any freight they may have to pay on the collect points, all points on the P. & R., or Jersey Central, which they use.

Q. The fact is, of course, you pay the freights on the roads which are first brought to your attention by the 7107
sales agents' drafts, do you not? A. Yes, sir.

Q. In other words, where you don't pay the freight yourselves, as you have made that differentiation, you evidently approve a voucher to the Treasurer for payment of drafts which your Sales Agent drew upon you for freight bills of various railroad companies, is that right? A. Yes, sir.

Q. Can you give me the list of the railroads which you pay, either through drafts of your Sales Agent, or in the way you have already described? A. Atchison, Topeka & Santa Fe, B. & O., Belt Line of Chicago, B. R. 7108
& P.

Q. That is Buffalo, Rochester & Pittsburgh? A. Yes, sir. C. C. C. & St. L., C. I. & B., C. & E. I., Chicago & Eastern Illinois, Chicago & Western Indiana, Chicago & Burlington & Quincy, Chicago & Milwaukee, Chicago, Milwaukee & St. Paul, Chicago, St. Paul, Minneapolis & Omaha, Chesapeake & Ohio, Erie, Elgin Joilet & Eastern, Great Northern, Grand Trunk, Illinois Central, Lake

7109 Shore Terminal & Transit Company, Lake Shore & Michigan Southern, Lake Erie & Western, Minneapolis & St. Paul, Saulte Saint Marie, Minneapolis & St. Louis, Michigan Central, New York Central & Hudson River Railroad, New York, Chicago & St. Louis, Northern Pacific, Pittsburgh, Chicago, Columbus & St. Louis, and Pennsylvania Company.

Q. That is the western line of the Pennsylvania Railroad? A. Yes. Pere Marquette, Toledo, Peoria & Western, and Wabash and any other railroad which our
7110 coal may go to prepaid points.

Q. How are the shipments of coal, in the nature of lake freights, paid? A. To the Lehigh Valley every month.

Q. That is, to the Lehigh Valley Transportation Company, is it? A. No freights are paid to the Lehigh Valley Railroad consigned in the Lehigh Valley Transportation Company's boats, but the Lehigh Valley Railroad Company draws a draft every month.

Q. And the railroad draws a sight draft to cover it, doesn't it? A. Yes, sir.

Q. That is paid on presentation? A. On presentation.

7111 Q. There are various other lake lines aside from the Lehigh Valley Transportation Company that you ship coal over, are there not? A. Yes, sir.

Q. And as to those other lines you pay freight? A. The freight on the shipments in the boats outside of the Lehigh Valley Transportation Company consigned by our company, are paid by our Northwestern, or the Western Sales Agents.

Q. And they draw drafts on you? A. Yes.

Q. Well, then, you don't mean to say they are paid by
7112 those agents? They are verified by the agents? A. The agents draw a draft, and pay by the draft.

Q. Isn't this true then, that these sales agency men of your company ascertain the correctness of those bills and then draw drafts on the Treasurer of your company here in New York? A. Yes, sir.

Q. Did you make up a list for me of tonnage sold to parties leasing yards and trestles from the Lehigh Valley Coal Sales Company? A. Yes, sir.

Q. Showing the total tonnage sold from March 1st, 7113
1912, to March 31, 1914? A. I did.

Mr. Warren: I offer it in evidence.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 25.**

Q. Now, did you make up a statement at my request of the tonnage your company purchased from collieries located on the Lehigh Valley Railroad Company not owned by Lehigh Valley Coal Company or Coxe Brothers & Company, incorporated, some of which is sold 7114
by the Sales Company on commission, or purchased under short time agreement for the year 1912? Did you make such a statement of that for me? A. Yes, sir.

Q. Is that a correct statement of such purchases? A. It is.

Mr. Warren: I offer it in evidence.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 26.**

Q. Now turn to the answer, if you will; turn to page 7115
No. 13 of the answer. Did you make up a statement for me covering the calendar year of 1913, of the expenditures made by your company on certain storage plants on the line of the Lehigh Valley Railroad covering rents, taxes and maintenance and then the totals? A. Yes.

Q. Is this the statement, and is it a correct one from the books of the company? (Paper shown witness.) A. That is correct.

Statement offered in evidence and marked **Lehigh Valley Coal Sales Company No. 27.** 7116

Q. Now, the South Plainfield plant, according to this Sales Company Exhibit No. 27, involved an expenditure to your company of over $19,000, did it not? A. Yes.

Q. Have you got before you the Coal Sales Exhibit No. 3, being the appraisal of certain plants made by Mr. Wilgus some time prior to the making of the contract? A. I have that here, yes, sir.

Q. Will you tell us what he appraised the South Plainfield plant at, at what figure? A. $256,170.

7117 Q. Will you tell me please what four per cent. of that would be—first, what five per cent. of that would be? A. Four per cent. of that would be $10,246.80; five per cent. of that would be $12,808.50.

Q. Then the figure $19,000, leaving out the odd hundreds, is about what per cent. of the appraised value by Mr. Wilgus of that plant as of the winter of 1911-1912? A. Nearly eight per cent.

Q. Do you know whether your company is not at the present time, in this year 1914, expending money on the
7118 South Plainfield plant for renewals or maintenance? A. Yes, they are.

Q. I will ask you whether you do know or not the amount that you are now involved in in the way of expenditures on that plant for the current year? A. No, I cannot say off-hand.

Q. Now, let us take the Newark, South Broad Street, plant; the appraisal upon that plant was what by Mr. Wilgus? A. $226,363.

Q. You computed the figures which appear in the Sales Company Exhibit No. 27 as to that plant and they
7119 aggregate $11,860.18, didn't you, for the year 1913 on that plant? A. Yes, that is correct.

Q. That is approximately what per cent. upon the valuation of $226,000? A. Five per cent.

Q. It is considerably over five per cent.? A. Yes.

Q. Take the next one, Rochester trestle. What is Wilgus' appraisal as to that? A. $90,101.

Q. And your expenditures, that is, rent, taxes and maintenance, amounted to $5,521.14? A. That is over six per cent.

7120 Q. Now, take the Jersey City, Grand Street, plant? A. Yes.

Q. The appraisement by Wilgus was what? A. $71,821.

Q. Your expenditures, rent, taxes and maintenance on that was $3,909.47? A. Yes.

Q. What per cent. approximately now is that on that property? A. That is over five per cent.

Q. Now, take the Hudsondale, the appraisal by Wilgus was what? A. $258,722.

Q. Your expenditures, rent, taxes and maintenance 7121
were $16,100.63, were they not? A. Yes.

Q. Now, roughly speaking, what per cent. is that of the appraised valuation? A. Nearly seven per cent.

Q. Take the next one, Ransom, the appraised value by Wilgus was what? A. $473,795.

Q. And you have on that, rent, taxes and maintenance of $25,608.57? A. Yes.

Q. What per cent. is that approximately of the appraised figure of that property? A. Over five per cent.

Q. Now, take the last one on this list, Wende? A. 7122
$318,953, the appraised valuation.

Q. And the rent, taxes and maintenance is $17,015.83? A. Over five per cent.—nearly six per cent.

Q. Can you state whether you were not making expenditures in connection with these storage plants through each of the two years of the existence of the company, and whether there has not been an appropriation made of large sums by the company to cover expenditures of that character? A. Expenditures are being made incidental to the repair and renewal of all the 7123
plants; made nearly every month; incidental to the wear and tear.

Q. It is constant expenses? A. Yes.

Q. I call your attention to page No. 13 of the Sales Company's answer, did you verify the figures there? I see they are the same as on your statement at any rate; that is, the amount paid by rent for the South Plainfield plant was $10,247, and the amount paid for taxes for the year 1913 amounted to $2,694; so that is correct according to your table, and you have got the correct amounts there in accordance with the items referred to there as 7124
expenditures and repairs and maintenance? A. Yes.

Q. Take page 15, the figures as to the South Plainfield are there accurately stated, are they not? A. Yes.

Q. And also as to Ransom? A. Yes.

Q. And also as to Wende? A. Yes.

Q. Now, have you calculated the cost to the Lehigh Valley Coal Sales Company of dumping and reloading coal, including rentals, at South Plainfield, Hudsondale, Ransom and Wende? A. I have.

7125 Q. Are the figures correct as stated upon page 16 of our answer? A. They are, yes.

Q. And they represent, therefore, an outlay by the Coal Sales Company in connection with those plants upon a per ton basis? A. Per ton basis.

Q. And an average per ton basis? A. Yes.

Q. Was that for the year 1913, or for what time was it? It says during the past year? A. That was for the fiscal year, ending March 31, 1914; the last fiscal year.

Q. Your fiscal year is from April to April? A. Yes.

7126 Q. Will you please turn to page 23 of your answer and tell me whether you have verified the figures here as to the gross business of the defendant for 1912? A. Yes.

Q. And is that figure correct, $33,202,159? A. It is.

Q. And for 1913 is the figure correctly stated there, $40,018,724? A. Yes.

Q. Have you made an analysis of the figure of $40,018,000; that is to say, the account of the year 1913, showing how that figure is made up. Is that the statement? (Handing witness statement.) A. That is the statement; it is correct, sir.

7127

(Statement offered in evidence and marked **Lehigh Valley Coal Sales Company Exhibit No. 28**).

Q. Have you made a similar statement for the ten months of the year 1912 that you were in business, that is, representing the figure of $33,202,000, and is that the statement? A. Yes.

Q. Is that correct? A. Correct.

(Statement offered in evidence and marked **Lehigh Valley Coal Sales Company Exhibit No. 29.**)

7128

Q. Is this a correct statement of the cost of handling per ton at the four storage plants which are named in it as appears upon pages 15 and 16 of the Lehigh Valley Coal Sales Company answer? A. Yes, that is the one I just testified to.

(Statement offered in evidence and marked **Lehigh Valley Coal Sales Company Exhibit No. 30.**)

Mr. Machen: You do not mean .1976 ten thou- 7129
sandths of a cent. It should be 19 cents, shouldn't it? A. Yes.

Mr. Gordon: Doesn't it also include rentals as well as handling? It says so on page 15.

By Mr. Warren:

Q. What does that cover, that cost of handling? A. All expenses incidental to each of those storage plants. It includes the cost of loading and reloading coal, rents, taxes, insurance and all expenses incidental to the opera- 7130
tion of the plant.

Q. Does it have to do with the coal that is handled at those plants, or is that an item of expense in connection with all your sales of coal which is charged by you to the maintenance of certain plants and concerning certain portions of the freight? A. Strictly the operation of those plants.

Q. Refer to page 6 and to a statement there of your tonnage handled for the last fiscal year, to wit, the year ending March 31, 1914, is that a correct statement of the tonnages handled and produced from the various per- 7131
sons named there, and those handled on commission, and does it cover the bituminous as there stated? A. Yes.

Q. Now, the business transactions for that period the answer shows amounted to $39,949,629.69; is that a correct figure? A. Yes.

Q. And have you made a statement of the items which make up that figure? A. I have.

Q. Is that a correct statement of the books of the company? A. It is.

(Statement offered in evidence and marked **Le-** 7132
high Valley Coal Sales Company Exhibit No. 31.)

Q. Have you prepared a statement in detail of the coal in stock and in transit which you purchased from the Lehigh Valley Coal Company and also the amounts paid therefor? A. Yes.

Q. Is that the statement, and is it correct? A. Yes, it is.

(Statement offered in evidence and marked **Lehigh Valley Coal Sales Company Exhibit No. 32.**)

7133 Q. Have you made up a statement in detail not only covering the amount of rent at certain storage plants, and taxes and maintenance and insurance and totalled up the insurance carried on those plants under your contract? A. Yes.

Q. Is that the statement, and is it a correct statement from the books of the company? A. It is.

(Statement offered in evidence and marked **Lehigh Valley Coal Sales Company Exhibit No. 33.**)

7134 Q. Have you also made up a statement for the calendar year 1913, of certain other storage plants which you have under lease or otherwise, although not named in the Government petition, in various places? A. Yes, sir.

Q. And is that a correct statement from the books of the expenditures as to those various plants named? A. It is.

(Statement offered in evidence and marked **Lehigh Valley Coal Sales Company Exhibit No. 34.**)

7135 Q. Have you got a similar statement of the expenditures on these same storage plants for the ten months of the year 1912, that your company was in business? A. Yes, sir.

Q. That statement is correct? A. Yes, sir.

(Statement offered in evidence and marked **Lehigh Valley Coal Sales Company Exhibit No. 35.**)

Q. All these statements I assume were made up by you and are correct? A. Made under my supervision.

7136 Q. Did you make up a statement of the coal purchased from certain companies other than the Lehigh Valley Coal Company from July 1st, 1912, to June 30, 1913? A. Yes.

Q. And is it a correct statement? A. That is a correct statement.

(Statement offered in evidence and marked **Lehigh Valley Coal Sales Company Exhibit No. 36.**)

Q. Now I note that Government Exhibit No. 105 pur- 7137
ports to show the purchasers from the Lehigh Valley Coal Sales Company for that same period, it being headed "Anthracite Coal purchased during the year by Lehigh Valley Coal Sales Company." This is a part of Government's Exhibit No. 105 and is headed "Anthracite Coal originating at points on and shipped over the Lehigh Valley Railroad, year ending June 30, 1913." Those figures do not agree with your figures as to purchases from the companies named there, do they? A. No, sir. 7138

Q. As a matter of fact, there is a difference of about 89,000 tons, isn't there? A. Yes.

Q. A difference of 89,313 tons? A. Yes.

Q. Your statement, however, is correct from your books, is it not, of the purchases made from those companies for that period? A. Yes.

Q. Do you know what occasions the difference in those figures, or where these figures came from that appear in this Government exhibit? A. I do not know, sir.

Q. Then you don't know what causes the difference of opinion? A. I don't know, no, only what I might infer. 7139

Q. Give us your best opinion? A. Our figures are made up from tonnage which we purchased from those operators, based on the dates the coal leaves the mine. The railroad figures I kind of infer are made up from the dates the coal passes the railroad forwarding office.

Q. You mean at Packerton & Coxton? A. Yes, in which they would include an overlapping tonnage and also it might include possibly some coal which was shipped by those parties to the Lehigh Valley Railroad Company or on their own private account. 7140

Q. The Pardee coal you handle on commission, do you not, or do you purchase it? A. At that time; that is for the fiscal year 1913.

Q. Yes. Ending June 30th? A. I think that was on commission at that time. Now we are purchasing it outright.

Q. The Louise is what company? A. The Raub Coal Company.

7141 Q. And Cranberry is A. Pardee? A. A. Pardee & Company.

Q. And are the books of the Lehigh Valley Coal Sales Company audited by the Audit Company of New York? A. Yes, sir.

Q. For each fiscal year? A. Yes.

Q. And you furnished full and free facilities, of course, to ascertain all the items of expenditures and debits and credits and everything? A. Every facility was afforded them.

7142 Q. That is done by direction of the President, is it? A. Yes, sir.

Q. And for the stockholders, I presume. Would you say that the drafts for freight of the Lehigh Valley Railroad Company are made substantially on the 7th, 14th, 21st and 28th of the month? A. No, they are made for the periods covering the 7th, 14th and 21st.

Q. A few days after that date they make a draft? A. Yes.

Cross-Examination by Mr. Gordon:

7143 Q. Mr. Summers, in connection with your tables we find the tabulation which appears on page 8 of the Coal Sales Company answer and which comprises the total shipments over the Lehigh Valley Railroad for the month of November, 1912, to certain points where the total shipments by the Lehigh Valley Coal Sales Company were for the same months to the same points, will you tell us how that figure of 284,752, showing coal shipped by the Lehigh Valley Coal Sales Company to Buffalo was made up? A. We made our figures up

7144 including all coal that goes to Buffalo, local, or intended for transshipment via Buffalo, via Lake into Canada or Ohio, Indiana, Michigan, and also any coal which might have gone to Wende for the Wyoming coal storage plant.

Q. Wende is the designation given by the railroad to your storage plant which is in the vicinity of Buffalo, but is not called Buffalo by the railroad? A. Not called Buffalo by the railroad company.

Q. So that any shipments which you had made dur- 7145
ing that month to Wende and to the storage plants and subsequently taken out of storage would be included in your figures as shipments to Buffalo? A. Yes.

Q. And that might not be the case in the railroad—— A. I infer the railroad company do not include Wende in their statement. Also our figures might include any coal going for shipment beyond the Niagara frontier.

Q. You did not mean to testify that you sent a large tonnage to Buffalo by any other railroad than the Lehigh Valley Railroad? A. No.

7146

Q. In fact, all of your shipments to Buffalo went that way? A. All of our shipments were strictly shipments consigned via Lehigh Valley Railroad; that I have quoted here.

Q. Referring again to that same table, it would be true, would it not, that during the month of November, 1912, there might be considerable shipments out of storage probably from the Lehigh Valley Coal Sales Company from the plants located at Jersey City or Newark, or considerable sales out of storage plants located in 7147
those communities which would not appear as shipments via the Lehigh Valley Railroad to those points for that month? A. There might be coal coming down there that month, but not be disposed of that month.

Q. Is it not true that coal is stored by the Lehigh Valley Coal Sales Company during the summer months in storage plants and released for the market during the busy winter season?

Mr. Warren: I object to that question, because it has no relevancy to the items to which the 7148
Government's counsel is calling the attention of the witness, because he is asking about Jersey City and Newark, and there is no proof coal is stored there during the summer season or anything whatsoever.

A. Coal is going down every month to those points.

Q. That is not the question I asked. (Question read.) A. Jersey City and Newark are not considered storage plants; they are retail yards.

7149 Q. Will you answer the question in general? A. Generally that is true.

Q. Did you at the request of counsel for the Government make up a statement showing for the period from March 1st, 1912, to March 31, 1913, and for the period from April 1st, 1913 to March 31, 1914, the cost of selling and handling anthracite coal to the Lehigh Valley Coal Sales Company? A. I did.

Q. Is this it? (Calling attention to Government's Exhibit No. 133.) A. Yes, that is correct.

7150 Q. Now, the statement shows, does it not, that the average cost of selling and handling anthracite coal for the period from March 1st, 1912, to March 31, 1914, was 18.4 cents to the Lehigh Valley Coal Sales Company? A. Yes.

Q. Nevertheless there has been offered in evidence in connection with your testimony by the counsel for the Lehigh Valley Coal Sales Company, as Lehigh Valley Coal Sales Company No. 23, a statement which purports to show that out of a commission of 12½ cents per ton the Lehigh Valley Coal Sales Company has ob-

7151 tained for the sale of Markle coal for the same period of 2.37 cents per ton? A. Yes.

Q. In the statement which has been offered by counsel for the Lehigh Valley Coal Sales Company in connection with your testimony and designated as Lehigh Valley Coal Sales Company Exhibit No. 27, it appears that $6,224.80 was spent for the maintenance of the premises at South Plainfield. Can you tell us what the nature of those expenditures were? A. I can tell by referring to the vouchers; I cannot say offhand.

7152 Q. Do you know whether they were large expenditures which might perhaps probably be spread over a period of years and would be really extraordinary expenses if injected into the account for a single year? A. I don't think so. I think they are all small incidental to the operation of the plants.

Q. But you haven't any definite knowledge? A. No. I can only verify it by analysis.

Q. Will you tell us? A. Yes.

Q. That you figure at what per cent., of the total of 7153
rent, taxes and maintenance as shown in your Exhibit No. 27 would be for all the plants mixed together—what per cent. of the total value of all the plants taken together as given in Mr. Wilgus' estimate to which you referred in connection with your examination by counsel for the Coal Sales Company? A. No, sir, I have not.

Q. It would be less than six per cent., would it not? A. I could not say that without calculating.

Q. In your calculations as to individual plants did the percentage of the total value as to any one plant except 7154
that at South Plainfield, exceed seven per cent.?

Mr. Warren: I object; he gave the figures of each one, and whatever they did shows on the record.

A. I have not got the list of the plants here that I figured on, and I cannot calculate it without reference to it.

Q. In Government Exhibit No. 110, furnished by the 7155
counsel for the Lehigh Valley Coal Sales Company at the request of the Government, showing the amount of coal in storage and in transit transferred by Lehigh Valley Coal Company to the Lehigh Valley Coal Sales Company under the contract of March 1st, 1912, there appears at the bottom a statement "Total on hand per inventory"; do you know what those words "per inventory" refer to? A. I infer they refer to various inventories received by the Coal Company from the Superintendent and the parties in charge of the respective storage plants and retail yards. 7156

Q. Do you know whether there was any actual measurement of the coal made at that time—how was that inventory made up from the books of the Coal Company at the respective plants? A. I don't know.

Mr. Warren: If you know now?
The Witness: I don't know.

7157 By Mr. Warren:

Q. Did you ascertain the other day the per cent. of the total coal handled by the Lehigh Valley Coal Sales Company for the fiscal year ending March 31, 1914 that went to tide points; did you look that up, and is this a memordandum of it? (Handing witness paper.) A. Yes, the total to Perth Amboy 12 per cent.

By Mr. Machen:

Q. That I presume does not include coal shipped to
7158 Perth Amboy and transshipped to other points beyond? A. Yes; includes the total sales, whether they are at Perth Amboy or at New York points via Perth Amboy.

Q. For instance, if the coal were shipped by the Bee Line barges to Providence it would still be included? A. Yes.

Q. In other words, that does not consist exclusively of coal destined to New York City? A. No.

By Mr. Warren:

Q. It is more than half, isn't it? A. Yes.

7159 Q. In other words, that 12 per cent. includes straight coal, for instance, for New York City consumption, isn't it? A. You mean the matter of consumption is shown on that shipment too?

Q. No, I meant what I said. You have stated that covered coal that might go to Providence, Rhode Island? A. Yes.

Q. Then, of course, the 12 per cent. covers more than the coal that is for sale at tidewater points? A. Yes, points beyond.

7160 Hearing adjourned to Wednesday, July 29th, 1914, at 9:15 o'clock, A. M.

UNITED STATES vs. LEHIGH VALLEY RAILROAD CO., *et al.* 7161

New York, July 29th, 1914.

Hearing resumed pursuant to adjournment.

Appearances as before.

William L. Summers, recalled.

Cross-Examination by Mr. Gordon:

Q. Mr. Summers, in estimating the profits of the Lehigh Valley Coal Sales Company from the sales of Markle coal, how is that estimate made? A. That is arrived 7162
at by deducting the proportion of the selling expense chargeable against Markle coal, by arriving at the total selling expense and finding the per cent. of Markle's tonnage to the total tonnage sold for that period and applying that percentage to the total amount of the selling expense.

Mr. Warren: It was a matter of estimation.

The Witness: Yes, based on the pro rata. That is, the practical selling expense. There is no handling expense at all because Markle's coal is 7163
not stocked by our company.

Q. You never stock Markle's coal? A. We never stock Markle's coal. You will notice in my other statement that the eighteen or nineteen cents per ton is the expense per ton for handling and selling.

Q. Mr. Markle testified that the losses in transit were borne by the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company; in making your estimate did you allow for anything of that sort? A. So far as 7164
degradation on Markle's coal which he may stock—on the coal in Perth Amboy, any degradation at Perth Amboy Markle & Company stand. On any coal which is lost in transit claim is presented by the Lehigh Valley Coal Sales Company against the Lehigh Valley Railroad Company. The majority of claims are paid by the Railroad Company when the evidence is conclusive that the fault is with the Transportation Company.

7165 Mr. Warren: You mean loss of coal in transit?

The Witness: Loss of coal in transit. Any claims which the Railroad Company may decline, which are very small items.

Mr. Warren: You mean they decline small payments or decline the claim or something?

The Witness: The items claimed are small, a half ton or a ton and a quarter, are absorbed by the Lehigh Valley Coal Sales Company.

Mr. Warren: You do not mean to say that now-
7166 adays there is any Markle coal stored at Perth Amboy under the tariffs of the Railroad Company?

The Witness: No.

Mr. Warren: That does not pertain to-day?

The Witness: No, but in that statement I made up for that period it did pertain.

Mr. Warren: It did pertain at one time?

The Witness: Yes, sir.

7167 Q. I understand from Mr. Markle's testimony that losses and bad debts are also borne by the Lehigh Valley Coal Sales Company, is that the fact? A. That is correct.

Q. Was any allowance made for those losses in figuring the estimated profits?

Mr. Warren: I object to the question until it has been shown there were losses. If there were any then you can ask if they were estimated.

7168 A. To my knowledge there have been no losses incurred.

Q. The Coal Sales Company has always been able to collect its bills? A. Yes, sir. Before I went with the Sales Company I was auditor of sales for the Lehigh Valley Coal Company.

Q. Does the Lehigh Valley Coal Sales Company insure the Markle coal? A. No, sir.

Q. I show you Lehigh Valley Coal Sales Company Exhibit No. 35, being a statement as to the storage

plants of the Lehigh Valley Coal Sales Company. Is 7169
the item in the column headed "Insurance carried," insurance of the coal in storage plants or of the storage plants themselves? A. The plants themselves. The insurance on coal is a separate item entirely. This is strictly on the plants and buildings and structures and machinery and so forth, not on stocks.

Q. In your figuring of the cost of handling and selling your own coal, do you include the cost of insurance of the coal itself as an element in the cost of handling it? A. Yes. 7170

Q. And also the insurance—— A. All expenses; any insurance on coal stocks or insurance on plants and buildings, that is all the insurance.

Q. That is all a part of the cost of handling and selling the coal? A. Yes.

By Mr. Warren:

Q. Calling your attention to the Lehigh Valley Coal Sales Company Exhibit No. 20, the second sheet, which shows the vouchers in March that paid the items appearing thereon, can you give me the date of the actual payments to the treasurer of those vouchers? A. Yes; the dates which I gave are the dates on which the drafts were returned to or presented to the treasurer for collection by the bank. 7171

Q. It was paid, then, wasn't it? A. Yes; it was paid on that date. I want to say further it was not the date it was issued. Voucher No. 14 was paid March 9th; voucher No. 45 was paid March 29th; voucher No. 53 was paid April 29th; voucher No. 75, April 29th; voucher No. 90, April 29th; voucher No. 172, April 11th; voucher 7172
No. 198, April 29th.

Q. How long before this—before those dates of payment which you have just given—were the checks and vouchers given to the Lehigh Valley Coal Company, if you know? A. I have no knowledge of that. I draw the vouchers and pass them over to the treasurer; how long he kept them I can't say.

Q. You can say within a day or days ago? A. Yes; it might have been a week or two weeks before. At that

7173 time the Lehigh Valley Coal Company were in daily receipts of collections belonging to the Sales Company by reason of the customers remitting to the Lehigh Valley Coal Company instead of to the Lehigh Valley Coal Sales Company.

Q. On the bills receivable which you purchased from it? A. On the bills for coal sold by the Lehigh Valley Coal Company which we purchased.

Q. You speak of carrying insurance on coal; will you tell us, if you can, what that amounts to and what coal
7174 it is that you carried insurance on? A. We carried insurance on all coal which we stocked at the retail yards and storage plants. When the insurance is placed there is an advance premium paid to the underwriters and a weekly report is rendered showing the amount of insurance—a weekly statement is rendered showing the value of the coal in stock at the respective stocking points, which makes a total of 48 reports rendered for the year. At the end of the period the average valuation of the coal stocked is determined and an adjustment made to
7175 cover the actual cost of insuring the coal.

Q. Now, tell me if you can, approximately, what it costs you a year to pay for the insurance—I don't care whether it is advance or what it is if it is an insurance on coal? A. I would have to look that up because that fluctuates every year according to the tonnage. Some years it is heavy and some years lighter.

Q. They asked you if you carried insurance on the Markle coal. Of course, you don't carry insurance on coal during transit in railroad trains? A. No.

Q. And as you do not stock any of the Markle coal
7176 there is no occasion for carrying insurance on the Markle coal? A. Naturally.

Q. I think you have already stated that the Markle coal is very much more cheaply handled by you in view of the fact that it is handled in connection with the very large quantity of coal which you handle of your own or that you purchase from other persons? A. Yes.

Q. In other words, the Markle coal is about what proportion of the total coal you handle either by purchase

or on commission; it is not ten per cent., is it? A. I 7177
was going to say eleven per cent. About eleven per cent. if my recollection is right.

Q. And in this estimated statement which you prepared for the Government's counsel and which I offered yesterday, I think you have already said it was simply an approximation and you did the best you could? A. Yes.

Q. And you have all your selling agencies, all your overhead expenses, and all your general expenses, you have the rent while handling the Markle coal? A. Yes; 7178
I don't think the expenses decreased at all.

Q. Nor are they enlarged by handling the Markle coal appreciably? A. No.

Q. So that to comply with the Government's request you did your best to try to arrive at some figure to represent the profit on Markle coal in view of all of these conditions which you have now covered? A. I did, and I think it is a fair and equitable representation.

Q. In other words, the Sales Company is obliged to have a working capital at all times during the year in 7179
view of the large quantity of coal which it has to have in stock at times, and in order to take care of this coal it has had to borrow money at times in very large quantities, too, isn't that right? A. Yes.

By Mr. Gordon:

Q. What was the original amount of paid in capital stock of the Lehigh Valley Coal Sales Company?

Mr. Warren: I object to the witness guessing on that unless he has the figures. 7180

Mr. Gordon: We want to bring it up at this time as a basis for a further statement, and you give it in your own answer.

A. It was $6,060,800.

Mr. Warren: That is the amount of the authorized capital of the Sales Company which was subscribed and paid for into the treasury of the company at the organization?

The Witness: Yes, sir.

7181 Q. And as is shown in the Lehigh Valley Coal Sales Company Exhibit No. 20, which was introduced in connection with your testimony, it is true, is it not, that the Coal Sales Company immediately expended over $8,200,000 for anthracite coal stocks, sales agency accounts and other small miscellaneous items?

Mr. Warren: Object to the word "immediately." It did it within the first two months; there is no proof they did it immediately.

7182 Q. Was it practically within the first month they expended that sum? A. No, within the first two months, because there are payments here up to April 29th, so that would be really two months.

Q. They issued drafts within the first month which were paid within the first two months? A. Yes.

Q. To the amount of over $8,200,000? A. Yes.

Q. Where did this money come from; they had only $6,000,000? A. A loan of $1,000,000 was negotiated with Drexel & Company.

7183 Mr. Warren: That accounts for some of it; you have something more to account for.

A. (Continuing.) In the meantime collections came in from coal bills which the Lehigh Valley Coal Sales Company had purchased as of March first from the Lehigh Valley Coal Company.

Mr. Warren: You say they came in; did they come in to an extent sufficient to enable you to meet your checks for payment to the Coal Com-
7184 pany that appear on those vouchers?

The Witness: Yes, sir.

Q. And what did you do for working capital meanwhile? A. Meanwhile we did not have but very few expenses to meet until the succeeding month.

Q. What month do you mean by the "Succeeding month?" A. Why, until April, because the coal which we purchased during the month was not paid for until the succeeding month. That was the largest item we had to take care of.

Q. How large a sum would purchased coal and other 7185
bills for the month of March amount to? A. I could not say offhand. I would have to look that up.

Q. I understood from your answer to one of Mr. Warren's questions that your estimates of the profits in selling Markle coal did not include any item of what might be called the general expenses of the Coal Sales Company.

Mr. Warren: I did not ask that question nor did he answer that.

7186

Q. Was that the fact, that it did not include any charge for what might be called the over head general expenses of the Coal Sales Company? A. The statement I prepared includes operations, all expenses of selling and general office expenses; all expenses except handling.

Leo A. Stem, called as a witness on behalf of the Lehigh Valley Coal Sales Company, being first sworn, 7187
testified as follows:

Direct Examination by Mr. Warren:

Q. Where is you home, Mr. Stem? A. Allentown.

Q. Pennsylvania? A. Pennsylvania.

Q. What is your business? A. Sales agent.

Q. For what company? A. Lehigh Valley Coal Sales Company.

Q. How long have you been in the employ of the Lehigh Valley Coal Sales Company as sales agent? A. Since the starting of the Coal Sales Company. 7188

Q. In March, 1912? A. In March, 1912.

Q. Prior to that time what was you business? A. In a smilar business with the Lehigh Valley Coal Company.

Q. How many years have you been a sales agent for either the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company? A. Either seven or eight years; since my predecessor died.

Q. And has your residence during all of that time been at Allentown? A. Two years ago it was at Bethlehem.

Q. How long has it been at Allentown? A. Two years.

7189 Q. Prior to that where did you live? A. Bethlehem.

Q. How long did you live there? A. Twenty-two years.

Q. What was your territory as sales agent? A. From Waverly, New York, to Bound Brook, New Jersey.

Q. You sell coal for the Lehigh Valley Coal Sales Company and have for the last two years and upwards in that territory? A. Yes.

Q. And are you familiar with the business of that company in merchandising coal in that property? A. I think so.

7190 Q. First of all I want to ask you to take the petition filed by the Government in this case, starting at page 52, and read to me the names of the concerns in that list that you sell coal to. First, before I ask you to do that, all coal which the Lehigh Valley Coal Sales Company sells in your territory you are familiar with and know about? A. Yes, sir.

Q. And have charge of, as their representative in that territory, isn't that right? A. Absolutely.

Q. Now, kindly proceed and read that list and tell me the names of those to whom you have sold any coal in

7191 the last two years? A. Marcus E. Good.

Q. You sold to Marcus E. Good? A. Yes.

Q. Can you tell us in what quantities—I don't mean now to ask you to give us exact figures, but approximately what quantities per year have you sold to Marcus E. Good? A. Marcus E. Good probably 3,000 tons.

Q. A year? A. A year.

Q. He is at Allentown, is he not? A. Yes, sir.

Q. Where you now reside? A. Yes.

Q. Do you know whether he purchases his anthracite

7192 coal from any other concern than yours? A. I am told so. The salesman tells me that he buys coal from other people.

Q. Do you know from what the Government counsel calls the general understanding of people? A. Yes; I have the understanding that he buys elsewhere.

Q. You are familiar with trade conditions there in anthracite coal? A. Yes.

Q. And you can state such familiarity that he purchases from other parties? A. Yes.

Q. Now, he occupies a trestle or coal yard along the 7193
line of the Lehigh Valley Railroad, doesn't he? A. Yes.
Q. And has occupied it at least during your familiarity with the conditions at Allentown? A. Yes.
Q. Now, take the next name of the man you sold to? A. James Butz & Company.
Q. How much do you sell him in a year? A. 4,000 tons.
Q. Do you know whether he handles any other anthracite coal than that he buys from you? A. Yes.
Q. The next name? A. Edgar J. Lumley; he is a small 7194
dealer. He may buy a thousand tons from us.
Q. Do you know whether he buys from other persons? A. Yes, I know that.
Q. Next? A. Allen Coal Company.
Q. How much do you sell that concern in a year? A. Nothing.
Q. Nothing at all? A. Nothing at all.
Q. Do you know whether he handles anthracite coal? A. Yes.
Q. W. H. Marsteller; do you sell him any coal? A. 7195
Yes, sir.
Q. About how much in a year? A. About 2,000 tons.
Q. Do you know whether he handles any other anthracite? A. Yes.
Q. Next, E. Kern; do you sell him any coal? A. No, sir.
Q. Do you know whether he handles anthracite coal at Allentown? A. He is out of business now.
Q. He is out of business now? A. Yes.
Q. Do you know when he got out of business? A. 7196
About a year ago.
Q. Prior to that time did he handle anthracite coal? A. Yes.
Q. The next name, D. F. Bast; did you sell him any anthracite? A. No, sir.
Q. Does he deal in anthracite coal? A. Yes.
Q. And has he for the last two years? A. Ten years.
Q. Jeremiah Kemmerer; do you sell him any anthracite coal? A. No, sir.
Q. Has he dealt in and handled anthracite coal in the last two years? A. Yes.

7197 Q. J. F. Butz & Company; do you sell him any coal? A. That is the same concern.

Q. In other words, that is a duplicate? A. That is a duplicate.

Q. E. C. Smoyer; do you sell him any anthracite coal? A. Yes.

Q. About what quantity annually? A. Oh, I should say about 2,000 tons.

Q. Do you know whether he handles any other anthracite coal? A. Yes.

7198 Q. J. Martin Laubach; do you sell him any anthracite coal? A. He is out of business.

Q. Do you know when he retired from business? A. Within a year.

Q. Did you sell him any coal before he got out of business? A. Yes.

Q. Did he handle any other coal? A. Yes.

Q. Did Smoyer handle any coal other than what he bought from you? A. Yes.

Q. William H. Wisser; do you sell him anthracite? A. Yes, sir.

7199 Q. What quantity, please? A. 1,200 to 1,500; he is a small dealer.

Q. Does he buy from anybody else? A. Yes, he buys a little occasionally; not much.

Q. Southdown Knitting Company? Do you sell them anthracite? A. They are out of business.

Q. When did they get out of business? A. Within two years, sir.

Q. Lehigh Mills Corporation? A. The same, they are out of business.

7200 Q. J. A. Lieberman's Sons? A. They are brewers.

Q. Do you sell them anthracite? A. Yes.

Q. In what quantity? A. A thousand or 1,500 tons.

Q. Do they buy from anybody else? A. They may buy a car or two, but very little; they are pretty steady, they put their order in and never bother with it.

Q. They are not dealers, really? A. No; that is steam for the brewery. They don't sell any; that is not a retail yard.

Q. Lieberman Brewing Company? A. That is the same thing as Lieberman & Sons. 7201

Q. L. F. Neuweiler & Sons? A. That is a brewery.

Q. And you sell them coal, I suppose? A. Yes, sir.

Q. You don't know whether anybody else sells them coal or not? A. A little; they don't buy all hard coal.

Q. There is J. F. Butz & Company? A. That is the same name.

Q. They have them in three times, haven't they? A. Yes.

Q. Koch Brothers? A. That is a clothing house; that is for steam. 7202

Q. They buy steam sizes? A. Yes, for their electric light plant and heating.

Q. While I am on that let me ask you in your entire experience in merchandising anthracite coal does anybody in dealing with you simply say I want so many tons of anthracite coal? A. Oh, no.

Q. What do they say, whether a large purchaser or small? A. They tell us what kind they want to get.

Q. True, but what I want to find out is don't they say I want so many tons of certain sizes? A. Certainly. 7203

Q. Then do they generally buy anthracite coal as such? A. No, they buy it by sizes.

Q. Take a large customer, how would he approach you or you approach him? A. He would say you ship me so many tons a week, or every other week, one of egg, one of stove, three of chestnut or pea, as the case may be, of Cross Creek, or Hazleton or Jeddo or Highland or whatever they select.

Q. Whatever kind of coal they want? A. Yes. 7204

Q. And invariably in all sales there is the reference to sizes, isn't there? A. Undoubtedly.

Q. And the kind that he always wants, whether he wants in large quantity or small, a certain quantity of a certain designated size? A. Yes, decidedly.

Q. Maybe a certain kind or grade of coal? A. Sure.

Q. Koch Brothers is a clothing house? A. Yes.

Q. You sell them a little coal, do you? A. Yes, for some steam.

7205 Q. William Hilbert & Company; do you sell them any coal? A. No, I don't know anything about them. They must be very small dealers. We don't sell them, anyhow.

Q. R. S. Rathbun? A. He is out of business; he is a contractor.

Q. How long ago did he go out of business? A. Within two years.

Q. H. E. Lehr, he buys coal? A. He buys coal from other dealers; we don't sell him any. He is a peddler;
7206 he is not a coal dealer.

Q. C. C. Reichard? A. We don't sell him anything.

Q. F. B. Kintner, Athens? A. Yes, we sell him coal.

Q. That is in your territory? A. Yes.

Q. How much do you sell him in a year? A. About 3,500 tons.

Q. Do you know whether he handles other anthracite coal? A. Yes, he buys other anthracite coal.

Q. P. E. Apgar, Bound Brook; do you sell him any coal? A. Yes.

Q. About what quantity annually? A. About 3,500 or
7207 3,600 tons.

Q. Does he handle other anthracite coal than that you sell him? A. Yes. That is one of the parties referred to by the partner of Whitney & Kemmerer, who was on the stand yesterday; they sell him some coal, too.

Q. P. J. Staats, where is he situated? A. Bound Brook.

Q. Do you sell him coal? A. Yes.

Q. About what quantity annually? A. About 1,500 to 1,800 tons.

7208 Q. Does he handle other anthracite coal? A. That I don't know.

Q. Levi Stofflet, Cementon, Pennsylvania; where is Cementon? A. About five miles above Allentown, I believe, on the Lehigh Valley.

Q. A small town? A. A small town.

Q. You sell him coal, do you? A. Yes.

Q. What quantity annually? A. About 2,000 tons.

Q. Does he handle any other anthracite coal? A. That I don't know.

Q. John Struppler, Dimock, Pennsylvania? Is he in 7209
business? A. Not at Dimock, no, sir; he is at Montrose.
Q. Dimock is where? A. It is on the Montrose branch between Tunkhannock and Montrose.
Q. It is a little bit of a town as big as a station? A. It has half a dozen houses and they are a couple of miles apart.
Q. J. A. Depew, Delano; do you sell him any coal? A. Yes.
Q. What quantity annually? A. Five or six hundred tons. 7210
Q. Does he handle any other coal? A. I don't know.
Q. Where is Delano? A. It is up between Hazleton and Pottsville.
Q. Go on to the next man, William Shimer & Sons Company, Freemansburg, Pennsylvania; do you sell him anthracite? A. That is a manufacturing concern. We sell him.
Q. In other words, he is not a dealer at all? A. No.
Q. And what quantity do you sell him? A. 400 or 500 tons a year.
Q. That is steam sizes? A. No. For blast furnaces 7211
where there is a cupola used.
Q. Does he buy any other anthracite coal? A. Yes.
Q. Horace Gross, do you sell him any? A. Yes.
Q. About what quantities annually? A. 1,800 tons.
Q. Does he buy other anthracite coal? A. That I don't know.
Q. G. N. Robinson, Jutland, New Jersey; do you sell him anthracite? A. Yes.
Q. What quantity annually? A. 1,000 or 1,200 tons.
Q. Does he buy from other dealers? A. I don't know. 7212
Q. D. S. Fox, Lansdown, New Jersey? A. It ought to be Clinton.
Q. Do you sell him coal? A. Yes.
Q. About what quantity annually? A. 2,000 to 2,200 tons.
Q. Does he handle any other anthracite? A. Yes.
Q. He buys from persons other than you? A. Yes.
Q. You sell anthracite at Laceyville, Pennsylvania, do you? A. Yes.

7213 Q. But you don't sell any to J. C. Donovan, who is on this list? A. No, sir.

Q. Do you sell any at LaGrange, Pennsylvania? A. Yes, sir.

Q. Do you sell any to P. J. Headley? A. Yes.

Q. About what quantity annually? A. A thousand tons.

Q. Do you know whether he handles other anthracite? A. I couldn't tell that.

Q. Do you sell coal at Mauch Chunk? A. Yes.

Q. To various dealers? A. To one dealer.

7214 Q. Who is it? A. Blakeslee. I don't see him on here.

Q. Do you sell to H. A. Butler? A. No, sir.

Q. Do you sell to James B. Bennyhoff? A. No, sir.

Q. And is there another dealer there by the name of Straub? A. Yes.

Q. Do you know whether he is on any other line than the Lehigh Valley Railroad? A. Both roads.

Q. That is the Lehigh Valley and the Central Railroad of New Jersey? A. Yes.

Q. They are on opposite sides of the river there, are

7215 they not? A. Yes. We don't sell him.

Q. Do you sell any at Meshoppen? A. Yes.

Q. Do you sell to a man by the name of B. J. Dougherty? A. No.

Q. Do you deliver at Montrose, Pennsylvania? A. Yes.

Q. Do you sell any coal there to a man by the name of John Struppler? A. Yes.

Q. And what quantity annually? A. 4,000 tons.

Q. The Delaware, Lackawanna & Western Railroad

7216 has a branch into Montrose, has it not? A. Yes.

Q. And then there is a branch known as the Montrose Branch of the Lehigh Valley Railroad? A. Yes.

Q. Do you sell any coal at Orwigsburg, Pennsylvania? A. Yes.

Q. Do you sell to a man by the name of Charles Heisler? A. Yes.

Q. About what quantity annually? A. 800 to 1,000 tons.

Q. Do you know whether he handles any other anthracite? A. I could not tell.

Q. Do you sell to more than one person there? A. 7217
No, sir.

Q. Do you sell any anthracite at Pattenburg, New Jersey? A. Yes.

Q. Do you sell any to a man named William A. Bird? A. Yes.

Q. And what quantity annually? A. Two or three hundred tons.

Q. Do you know whether he handles any other coal? A. Yes.

Q. Do you sell any coal at Phillipsburg, New Jersey? 7218
A. Yes.

Q. Do you sell to dealers named on page 54 of the Government's petition there, there are several of them, do you sell to W. F. Carty, for instance? A. No.

Q. You don't sell him at all? A. No; he has a grocery store.

Q. Do you sell to M. J. Cannon? A. Yes.

Q. And what quantity annually? A. About 5,000 tons.

Q. Do you know whether he handles any other coal from other dealers? A. Yes.

Q. Do you sell to Tippitt & Wood? A. No. 7219

Q. Do you sell any to James Fleming? A. Yes.

Q. About what quantity annually? A. 4,500 tons.

Q. Do you know whether he deals with other producers? A. Yes, he does.

Q. Do you sell any at Somerville, New Jersey? A. South Somerville.

Q. Do you sell to a man by the name of S. B. Van Ness? A. Yes, sir.

Q. About what quantity annually? A. 2,000 tons.

Q. Do you know if he handles other anthracite? A. 7220
I don't know.

Q. Do you sell any anthracite at Sunnyside, New Jersey? A. No, sir.

Q. And you do not, therefore, sell any to a man by the name of Edward Bloom? A. No, sir.

Q. Do you sell any anthracite at Sayre, Pennsylvania; do you sell any to D. Clarey Coal Company? A. Yes.

Q. You do sell him? A. Yes.

7221 Q. And what quantity annually? A. That has not been in my territory a full year. Prior to that he was in Buffalo, but I would imagine it would go 7,000 or 8,000 tons.

Q. Do you know whether he handles any other anthracite coal? A. I could not tell.

Q. Do you sell any to a man there by the name of M. A. Paul? A. No, sir.

Q. Do you sell any at Springville, Pennsylvania? A. Yes.

7222 Q. And do you sell to the firm of Brown & Fassett? A. Yes.

Q. How much a year? A. 1,200 or 1,300 tons.

Q. Do you know whether he handles other coal? A. I could not tell.

Q. Do you sell at Stockertown, Pennsylvania? A. No; that is out of existence. The trestle is torn down and he is out of business.

Q. The name of Arthur Taylor, at page 55, at Stockerton, and that concern is out of business? A. Yes.

Q. Anything else there? A. Nothing else.

7223 Q. Now, are you familiar with the cities, towns and villages on the Lehigh Valley Railroad from Bound Brook, New Jersey, to the northern line of your territory? A. Yes.

Q. And what is the northern line of your territory? A. Waverly.

Q. Waverly is quite a large town in the State of New York, isn't it? A. About 7,000 or 8,000.

Q. Do you sell anthracite at Waverly? A. Yes.

Q. In competition with other anthracite? A. Yes.

7224 Q. Coming on down from Waverly, what is the next town on the Lehigh Valley Railroad? A. Sayre.

Q. Do you know whether there are other dealers in anthracite coal at Sayre? A. Yes.

Q. And are you in competition with them as sales agent of the Coal Sales Company? A. Yes.

Q. Take the next point down? A. Athens.

Q. Are you in competition there with other dealers in anthracite? A. Yes.

Q. Is there a town along the Lehigh Valley Railroad between Waverly and Bound Brook of any consequence? A. Yes. 7225

Q. I mean in which you are not in competition with other dealers in anthracite? A. No, sir.

Q. Is Towanda the next large town below Athens? A. Yes.

Q. That is the county seat of Bradford County? A. Yes, sir.

Q. That is on the line of the Lehigh Valley Railroad? A. Yes. 7226

Q. You are in competition there, of course, with other dealers? A. Yes.

Q. While you are up in that territory, do you know what is referred to as Bernice coal? A. Yes.

Q. West of Towanda? A. Yes.

Q. A matter of twenty or thirty miles up there, the Connell Anthracite Coal Company and the Northern Anthracite Coal Company and the O'Boyle & Foy Anthracite Coal Company? A. Yes.

Q. And you know that they produce a considerable tonnage in the aggregate, don't you? A. Yes. 7227

Q. Several hundred thousand tons a year? A. Yes.

Q. Have you seen that coal? A. Yes.

Q. In your territory do you come in competition with that coal? A. Sure.

Q. Below, east now, or south, or whatever you may call it from Towanda, there are a few little towns there like Meshoppen and others until you get down to Tunkhannock? A. Yes.

Q. And that is the county seat of Wyoming County, isn't it? A. Yes. 7228

Q. Do you deal in anthracite there? A. Yes.

Q. And in competition with other dealers? A. Yes.

Q. That is quite a little town? A. Yes.

Q. The next town below that is Pittston, isn't it? A. Yes.

Q. Are other dealers in competition there with you in anthracite coal? A. Yes.

Q. The next town below that is Wilkes-Barre; that, of course, is a large city as we speak of it in Pennsylvania at least? A. Yes.

7229 Q. And there you are in competition with other dealers, of course? A. Yes.

Q. And you have several customers there in Wilkes-Barre? A. Yes.

Q. And now below Wilkes-Barre is South Wilkes-Barre and Sugar Notch, a little town on the mountains, and you go over that mountain and come on down to White Haven, which is the first town, isn't it? A. Yes.

Q. That is in the Lehigh region, isn't it? A. The Lehigh region.

7230 Q. And on the banks of the Lehigh River? A. Yes.

Q. And New Gauge, which runs all the way down to Mauch Chunk below? A. Yes.

Q. And you sell there? A. Yes.

Q. And have competition? A. Yes.

Q. So I might go on down naming each town all the way along the Lehigh Valley Railroad, and I want to ask you whether it is true or not that in all these places there is active competition in handling and selling and merchandising coal between you and other gentlemen or concerns, corporations handling anthracite? A. Yes.

7231 Q. Your territory does not go any further north than Waverly, which is just a little distance above the Pennsylvania Line? A. Yes.

Q. So you are not familiar with the conditions in the State of New York? A. No.

Q. Are you familiar with the trade conditions in what is sometimes spoken of as the Hazleton region? Also the Pottsville region? A. What is it you have reference to?

Q. With merchandising coal; you sell coal, for in-

7232 stance, at Pottsville? A. We don't sell any coal at Pottsville.

Q. Do you sell any at Hazleton? A. We sell at Hazleton.

Q. In competition with other dealers? A. Yes.

Q. Can you name any other town which you speak of as the Hazleton or Schuylkill region in which you sell anthracite? A. Delano; that is the Schuylkill region.

Q. Any other? A. Ashland; that is in the Schuylkill region.

Q. That is in the Schuylkill Mountains, isn't it? A. 7233
Schuylkill Mountains.

Q. You sell coal there? A. Yes.

Q In competition with other dealers? A. Yes.

Q. Your territory covers Bethlehem? A. Yes.

Q. And South Bethlehem? A. Yes.

Q. It is a town only about six or eight miles from Allentown, isn't there? A. Yes.

Q. Or, rather, there are two towns, one on each side of the river? A. Yes.

Q. And you are in the division points, are you not? 7234
A. Yes.

Q Are you in charge personally of the Sales Company in Harrisburg? A. No, sir.

Q. Do you have anything to do with the payment of freight charges by the Lehigh Valley Railroad or any other railroad on behalf of the Lehigh Valley Coal Sales Company as a shipper, or is that handled here in New York? A. Only where there is no station agent, then we prepay the freight.

Q. Do you know of any discrimination or any favor 7235
shown to the Coal Sales Company of which you are the representative, by the Lehigh Valley Railroad in any way in the matter of freights? A. No, sir.

Q. You pay the—— A. Public tariff.

Q. And if there be occasion of detention of cars you are called upon to pay demurrage, are you not? A. Yes.

Q. Just like any other shipper? A. Yes.

Q. And you have done it, haven't you, in the last two years? A. Yes.

Q. And you know of other shippers of anthracite on the Lehigh Valley Railroad—I don't mean to give the 7236
names now, but I mean you know that other anthracite is carried by the Lehigh Valley Railroad Company, do you not? A. Sure.

Q. In considerable quantities? A. Sure.

Cross-Examination by Mr. Machen:

Q. Mr. Stem, the learned counsel for the Coal Sales Company has taken you over the list of lessees named in the petition on pages 52 to 55, and you have given us

7237 from time to time estimates as to the amount of coal sold by you per year to various ones of these lessees, have you not? A. Yes, sir.

Q. Now, these estimates are only estimates? A. Yes, sir.

Q. Because you have been testifying without any accurate data, isn't that so? A. Yes.

Q. Each feature only from memory? A. Yes.

Q. And there are a large number of these lessees, and, of course, you cannot be expected to remember ac-
7238 curately how much coal is sold to each one? A. Oh, no.

Q. So you are only speaking in a very general way? A. Yes.

Q. Do you sell any coal to any dealers who are not mentioned in this list on pages 52 to 55 of the petition at the places which are included in that district; that is to say, are there any purchasers from the Coal Sales Company who reside at the places mentioned in that list who are not mentioned there, in your territory? A. There isn't any doubt but what we are selling coal to people that are not on here.

7239 Q. That is all that I want to know. I don't suppose or expect you to remember the names. A. Yes.

Q. Does the Lehigh Valley Coal Sales Company engage in the retail coal business at all? A. Not in my territory.

Q. You sell only to dealers? A. Yes.

Q. Do you sell by wholesale to consumers, such as breweries, manufacturers and furnaces? A. They buy steam sizes and the retail yards handle domestic sizes. Retail yards do not handle buckwheat or steam sizes;
7240 the manufacturers buy direct.

Q. The prepared sizes are used for domestic use? A. For domestic use and sold only to retail dealers.

Q. You said it was customary for a purchaser of coal to demand coal of a particular size? A. Yes.

Q. And also generally to ask for a coal from a special mine? A. Yes.

Q. Do you make any contracts with manufacturers or dealers to supply them with certain quantities of coal from particular mines? A. We make contracts, yes;

especially with manufacturers. They generally in April 7241
make an arrangement to run for twelve months, so much a week or so much a month.

Q. To supply them with their needs? A. More or less; what the requirements are.

Q. They handle the coal from a particular mine? A. Yes.

Q. That is true of each of the mines, is it, in the region; each one has some special—— A. Yes.

Q. Each one is preferred by some person? A. By somebody; yes, sure. 7242

Q. And you have contracts therefore, with different manufacturers for coal from particular mines and every mine in the region? A. Yes.

Q. You have spoken of the Bernice coal, and you said that it comes in competition with the coal of the Lehigh Valley Coal Sales Company, is that correct? A. Yes, sir.

Q. You also come in competition with bituminous coal, do you not? A. For steam purposes.

Q. Does the Bernice coal command as high a price as the coal from what is generally known as the three anthracite regions? A. No, sir; generally about $1.50 less 7243
per ton.

Q. On each size? A. On each size.

Q. And what is the reason for this? A. I imagine it is a very free burning coal and very easily mined. It is semi-bituminous.

Mr. Warren: Semi-anthracite you mean?

The Witness: Semi-anthracite, yes, that is right.

Q. Semi-anthracite or semi-bituminous, whichever way 7244
you look at it? A. Yes, you might say that.

Q. I mean to say does the Lehigh Valley Coal Sales Company deal in any free burning coal of a similar character? A. No, we don't sell any in our territory.

Q. Do you come into competition with coal at any point in your territory with the coal from the Lykens Valley region? A. We might in Trenton; some Lykens Valley coal comes in there, but not on the main line of the railroad that I know of.

7245 Q. That coal demands a premium, doesn't it? A. I have heard so.

Q. Do you know anything about the character of that coal?

Mr. Warren: I object to this as not cross-examination.

Question withdrawn.

Q. Since you have been connected with the Sales Department of the Lehigh Valley Coal Company, and since
7246 1912 with the Lehigh Valley Coal Sales Company, have there been any marked changes in the price of anthracite coal? A. No, sir.

Q. Weren't there increases in the price of anthracite coal between 1900 and 1905? A. You said since I was with the Lehigh Valley Coal Sales Company.

Q. My question was since you have been connected either with the Coal Company or the Coal Sales Company? A. Since the big strike, whenever that was, nine or ten years ago, there was a marked difference in price.

7247 Q. The price was raised considerably after the strike? A. After the settlement; a six months' strike.

Q. Of course, during the strike the prices were demoralized——

Mr. Warren: I object to this as not cross-examination; anything about prices during the strike.

Question withdrawn.

Q. Do you remember about when the Pennsylvania
7248 State tax on coal mined within the state became effective?

Mr. Warren: I object to that as not cross-examination. I will admit, however, it was July 1st, of last year, but I object to the question.

Q. In respect of that tax, what changes, if any, have been made by the Coal Sales Company in prices to consumers in your territory?

Mr. Warren: Of your own knowledge.

A. Two and a half per cent. was added to the invoice, 7249
or in the bill.

Q. Was any coupon or receipt given to refund the amount of the tax in case it should be declared unconstitutional? A. Yes.

Q. Is that tax still continued by the Lehigh Valley Coal Sales Company within your territory? A. That has existed until April of this year.

Mr. Warren: Started in April of this year?

The Witness: It existed until April of this year and then instead of adding two and a half per 7250
cent. to all their invoices the prices were raised in some cases five cents and in some cases ten so as to offset that; so, instead of having the two and a half per cent.—we had all kinds of trouble to keep track of that tax, I remember, so the prices were changed in some cases five and in some cases ten cents, which was the nearest amount to the two and a half per cent. valuation.

Q. Simply added to the amount of the bill to the pur- 7251
chaser? A. Yes.

Q. So that now the quoted price includes the additional amount added by the Coal Sales Company to represent the Pennsylvania State tax. A. Exactly.

Q. And the puchaser gets a bill simply for the amount whatever may be the price of the size? A. Yes.

Q. Wasn't there a coal strike in 1912? A. There are petty strikes all the time.

Q. There were labor troubles? A. There are little strikes all the time at some colliery, but not a general strike. 7252

Q. Was there not an increase in the price of coal in the year 1912? A. Not outside of the tax, that I remember.

Q. The tax did not become effective until 1913? A. That is right; there was no increase.

Q. Wasn't there an increase in the price of coal after an adjustment of the wage with miners in 1912?

Mr. Warren: As to sales you had charge of it?

The Witness: As to sales I had charge of; I don't recall it.

Re-Direct Examination by Mr. Warren:

Q. Mr. Stem, when did you start to add anything to the price by reason of the imposition of the so-called tonnage tax in Pennsylvania, if you can tell us when it started? A. In the case of our contracts they were made in April last year. Now, the tax became effective in July. Well, we could not claim on any of the contracts because the contracts were made prior to the passage of that act.

Q. Now, tell me when were you able to do it? A. We were able to do it at the expiration of that year.

Q. April, 1914? A. April, 1914.

Q. Did you add it to the sales made to any other customers than those under contracts prior to April, 1914? A. Yes, sir.

Q. When did you start with that class of customers? A. We started with them when—my recollection is when it became effective.

Q. Are you sure about that now? In other words, was it in July, 1913, when you started with it? A. I recall it now, it was——

Q. Wasn't it in December? A. We were at loggerheads or at sea what to do from month to month, and the general office held us up from one month to another until the fall, when this bill became effective in July—we did not get definite or positive instructions until the fall that it became sure that the tax would have to be followed.

Q. Then you started some time in the fall? A. We started in the fall, following the first of July.

Q. Don't you remember there was a twenty-five cent raise in price of anthracite after the resumption of work in 1912 and the conclusion of the wage agreement with the miners, and didn't it start out by not allowing the discount of fifty cents a ton for the spring months from the circular price, I mean? A. There was a strike. They did not work in April at all.

Q. They did not work in April nor May? A. That is right.

Q. Don't you remember after the strike there was a raise? A. There was no output in April at all; they started the middle of May.

Q. Refreshing your recollection, don't you recall that 7257
there was no discount on April and May circular prices allowed and that there was a raise of twenty-five cents a ton on prepared sizes? A. Yes, I recall that now.

Q. Now, you said to Government counsel that the figures that you gave as to sales to various persons named was only a statement in a general way? A. Yes.

Q. I would like to have you tell us how close you want to be understood as saying that you approximate those sales; are they practically right or a large way out of the way? A. No, no, they are practically cor- 7258
rect.

Q. So that however general it was it was a pretty fair statement of what you sold to those concerns? A. Undoubtedly. They would not vary 500 tons in either case. That is my daily business, to see what the customers are buying.

Q. What proportion of your affairs in your territory, taken in the year 1913, were sales on time contracts, whether short or long, on contracts that were made before July, 1913? Now, think of that before you answer, please. If you don't understand me, let me re- 7259
state it. A. You mean how much was under contract?

Q. In other words, how much of the coal you merchandised in the year 1913 was under contract that was made before July covering the month following July which you could not apply the tax to in the fall of 1913? A. If you will allow me, I think I have a memorandum from which I can work that up.

Q. You would say, would you, that about 200,000 tons of the total sales were under time contracts that ante- 7260
dated July 1st? A. Yes.

Q. And that your total sales in that year were in the neighborhood of 800,000 tons? A. Yes.

Re-Cross Examination by Mr. Machen:

Q. Did you say that only the steam sizes were under time contracts? A. Well, there are some contracts, too, that may come into the domestic market.

Q. But there are no time contracts for prepared sizes? A. No, sir.

7261 Q. That is to say, sizes above pea? A. No, except where they use it for manufacturing purposes. Some may be used for manufacturing purposes.

Mr. Warren: Then there are, of course, there are certain manufacturers?

The Witness: Yes. We have one concern who has a contract for 40,000 tons of broken and egg which are domestic sizes—our egg is considered a domestic size. They are under annual contract.

7262 Q. Those contracts too are for coal from particular mines from coal agents? A. This has no reference to mines at all. It is a contract calling for particular amounts and particular quantities and particular sizes.

By Mr. Warren:

Q. When you speak of contracts for coal from particular mines don't you mean that they ask for coal by designated names? A. Sure.

Q. Like, for instance, Jeddo coal or Lehigh coal? A. Exactly.

7263 Q. You don't mean by mines that they designate the particular mining operations out of which that coal is to come? A. Some of them designate the particular shaft or breaker.

Q. How general is that in your trade? A. Of course, that only applies to specific cases where they are very particular with the character of coal used.

Q. Are there many of that kind of people? A. No.

Q. Generally speaking, you sell the coal by the trade name for it, don't you? A. Sure.

7264 Q. And what are the trade names which you use in your territory in merchandising anthracite? A. We use Jeddo, Highland, Hazleton, Cross Creek, Packer, Wyoming; those are the trade names.

Q. And, of course, by Wyoming we mean the coal coming from the collieries in the Wyoming region? A. Yes.

By Mr. Machen:

Q. What are the collieries referred to by these other particular names; Highland coal means coming from

the colliery of the Markle Company, and Jeddo coal from the Jeddo colliery of the Markle Company? A. Yes. 7265

Q. And the Cross Creek coal is coal from what, do you know? A. That is the coal that comes from the Cross Creek Colliery.

Q. That is one of the collieries of Coxe Brothers? A. Coxe Brothers. Drifton is another.

Q. You say that is also a trade name? A. Yes.

Q. And you have contracts calling for Drifton coal or Cross Creek coal? A. Yes. 7266

Q. Or Beaver Meadow coal? A. Yes, Beaver Meadow is another.

Q. And so on down the line? A. Yes.

By Mr. Warren:

Q. Generally the coal is sold by trade names rather than by colliery names? A. Sure.

By Mr. Machen:

Q. But these are not trade names I understand; you did not mean that list to be exhaustive, did you? A. You see, in speaking about Cross Creek coal that generally covers two or three breakers in that vicinity. We don't aim to have a ledger account for every individual colliery in the invoicing of our coal. 7267

Alfred Urch, a witness called on behalf of the Lehigh Valley Coal Sales Company, being first sworn, testified as follows: 7268

Direct Examination by Mr. Warren:

Q. What is your business? A. I am the accountant of the New York office of the Lehigh Valley Coal Sales Company.

Q. In Mr. Summers' office, the general auditor? A. No, sir; I am in Mr. Wolle's office, general eastern sales agent.

Q. Did you prepare a statement of the quantity of anthracite sold in New York and Brooklyn for the calen-

7269 dar year from April 1st, 1913, to March 31, 1914? A. I prepared a statement.

Q. And is this the statement? A. Yes, sir.

Q. And is that a correct statement? A. Absolutely, yes, sir, from the records.

Statement offered in evidence and marked **Lehigh Valley Coal Sales Company Exhibit No. 37.**

Q. It records the tonnage handled by the Lehigh Valley Coal Sales Company in New York and Brooklyn for
7270 that year, does it not? A. From the New York office, yes, sir.

Q. But by the Sales Company—it is the Sales Company's tonnage? A. Yes.

Q. No other office sales indicated for the Sales Company except this office? A. Not that I know of. I know nothing about the affairs of the company beyond the New York office.

7271

James S. Hamilton, a witness called on behalf of the Lehigh Valley Coal Sales Company, being first sworn, testified as follows:

Direct Examination by Mr. Warren:

Q. Where is your residence, Mr. Hamilton? A. Buffalo, New York.

Q. How long have you lived there? A. Eight years.

Q. What is your business? A. General northern sales agent of Lehigh Valley Coal Sales Company.

7272 Q. How long have you been the general northern sales agent of that company? A. Ever since its organization.

Q. In March, 1912? A. March, 1912.

Q. Will you kindly tell us the territory which you cover as sales agent for that company? A. Western New York, Ontario, Ohio, Indiana, the lower peninsula of Michigan and Kentucky.

Q. Do you cover New York then from Waverly to Buffalo so far as the Lehigh Valley Railroad Line is concerned? A. Yes, I do.

Q. In other words, you have charge of such sales of 7273
anthracite that the Lehigh Valley Coal Sales Company make at every station upon the main Lehigh Valley Railroad between Waverly and Buffalo, do you not? A. Yes, I do.

Q. And also on other branch lines? A. On other branch lines, except a small territory north of Auburn and Canastota.

Q. Do you know who is in charge of that territory for the Sales Company which you do not represent? A. Mr. A. H. Schwarz of Syracuse.

7274

Q. I want to ask you to be kind enough to take the Government's petition, pages 52 to 55 inclusive, and follow me as I ask you some questions about some names of people on that list. I desire to ask you about every name that is within your territory what you are in charge of; the first one I assume is in your territory and appears on page 53, and the name is Cuddy & Geherin at Auburn, Washington Street; do you sell them anthracite coal? A. Yes.

Q. Can you tell us approximately what quantity per year you sold them in the last two years? A. About, 7275
roughly, thirty-five hundred tons.

Q. Would that be within five hundred tons would you say of the exact figure you sold them? A. I should think so.

Q. Do you know whether they handle other anthracite coal? A. Yes, they do.

Q. Do you sell other persons or concerns at Auburn aside from this concern? A. Yes.

Q. And their names do not appear on this list at all because the only name on this list, the City of Auburn, 7276
is that firm, do you notice that? A. Yes.

Q. How many customers would you say you have in the town of Auburn? A. Five or six.

Q. Now, let us take the next one in your territory, which would be Barton, would it not? A. Yes.

Q. Do you sell anthracite there? A. Yes.

Q. Do you sell to a man by the name of D. C. Bensley? A. Yes.

Q. And what quantity annually do you sell him? A. Probably a hundred tons.

7277 Q. Do you sell any other person at the town of Barton? A. No, sir.

Q. Do you know whether Mr. Bensley handles any other anthracite than that purchased from you? A. I think he does.

Q. Is Batavia in your territory? A. Yes.

Q. Do you sell a man there by the name of A. L. Carpenter? A. I do not.

Q. Do you sell anthracite there? A. Yes.

Q. More than one concern? A. Yes.

7278 Q. How many would you say? A. About four.

Q. Now, of course, Buffalo is in your territory? A. Yes.

Q. Do you sell any coal to the Yates-Lehigh Coal Company in the City of Buffalo? A. Yes.

Q. In what quantity? A. About 20,000 tons a year.

Q. Do you know whether they handle any other anthracite coal? A. Yes, they do.

Q. In considerable quantities? A. Yes, in considerable quantities.

Q. Purchased from other dealers than you? A. From
7279 other companies, yes.

Q. Now, there is only one concern in the City of Buffalo named in this list in the Government's petition. You, of course, know a considerable number in the City of Buffalo, do you not? A. Yes.

Q. And have various customers? A. We do.

Q. I presume you do not sell to anybody at retail? A. No.

Q. Do you sell manufacturers who are only buying for their own use? A. Yes.

7280 Q. They buy I suppose in appreciable quantities? A. Yes.

Q. Can you tell us about how many customers you have in the City of Buffalo; could you approximate that large and small? A. Well, probably half a dozen.

Q. Are you in competition in the City of Buffalo with other anthracite coal dealers? A. Yes.

Q. Are you in competition with the coal there which has been referred to as Bernice coal? A. Yes.

Q. Are you in active competition with these other competitors including the Bernice coal? A. Yes.

Q. Daily competition in the matter of sales? A. Yes. 7281
Q. Your territory covers Cayuga, New York? A. Yes.
Q. Do you sell a gentleman there by the name of Stanley R. Cummings? A. Yes.
Q. About what quantity annually? A. Probably 500 tons.
Q. Do you know whether he handles any other anthracite? A. I think he does; I understand he does.
Q. Have you any other customers in Cayuga? A. No.
Q. Cayuga is how big a place? A. Probably 500. 7282
Q. Do you know a town called Cayuta? A. Yes.
Q. That may be a very large town, but it escaped my observation a good many years. How big a place is it? A. I cannot say that off hand; it is a small place.
Q. Do you sell a man there by the name of G. F. Jones? A. Yes.
Q. Do you know whether he handles any other coal? A. Yes.
Q. Do you sell anybody else at that place other than Jones? A. I think not.
Q. Is Cazenovia in your territory? A. Yes. 7283
Q. Do you sell the firm of Tillotson & Howson? A. I do.
Q. About what quantity annually do you sell that concern? A. About 3,000 tons.
Q. Do you know whether they handle other anthracite? A. I don't know whether they do or not.
Q. Do you sell anybody else in Cazenovia? A. No, we do not.
Q. You don't sell Mogg & Davis? A. We did; they were predecessors of Tillotson & Howson. 7284
Q. They are out of business now? A. Yes.
Q. Now we have another large town, Cedar Swamp; do you know that town? A. Yes.
Q. Do you sell H. W. Longfellow there? A. We did sell him; I think he is out of business.
Q. Do you sell anybody in Cedar Swamp? A. No.
Q. Do you know a town by the name of Cheektowaga? A. Yes.
Q. Do you know a gentleman by the name of William E. Ely? A. No.

7285 Q. Do you sell anybody in Cheektowaga? A. No.

Q. Do you sell coal, anthracite, at Cortland, New York? A. Yes.

Q. That, of course, is quite a large city? A. Yes.

Q. Do you sell a concern there known as Jennings & Dunn? A. Yes.

Q. At what quantity annually? A. Twenty-five hundred tons.

Q. Do you know whether they handle other anthracite? A. Yes, they do.

7286 Q. Do you also sell the firm of Peckham & Morgan? A. Yes.

Q. About what quantity annually? A. 5,000 tons.

Q. Do you know whether they handle other anthracite? A. They do.

Q. Do you sell other customers in Cortland outside of those two? A. Yes, we do.

Q. You have several other customers? A. Yes.

Q. Do you know a man by the name of M. J. Seeger at Lancaster, New York? A. Yes.

Q. Do you sell him anthracite? A. We do.

7287 Q. About what quantities annually? A. About 2,500 tons.

Q. Do you know whether he handles other anthracite? A. I don't know that he does.

Q. You have other customers in Lancaster? A. No, we do not.

Q. Do you sell to Moore & Hadlow at Dickson, New York? A. I don't know that concern.

Q. And you don't know the place, even? A. No.

Q. Do you know the place Elmira Heights, New York?

7288 A. Yes.

Q. There is a firm there of Latham & Burns? A. Yes.

Q. Do you sell them anthracite? A. We do.

Q. About what quantity annually? A. Probably 2,000 tons.

Q. Do you know whether they handle other anthracite? A. Yes, I understand they do.

Q. Do you have other customers in Elmira? A. Yes.

Q. You have a considerable number in Elmira, have you not? A. Yes.

Q. And sell a large number of customers? A. Yes. 7289
Q. Elmira Heights is how close, if you know, to Elmira? A. A mile or so, I should say.
Q. In other words, it is a suburb? A. Yes, a suburb.
Q. Do you sell a man by the name of Westlake at Horseheads, New York? A. I don't think so. I cannot place the man.
Q. Do you sell a man by the name of Adams at Ira, New York? A. That is not in my territory.
Q. Do you know a man by the name of Williams at Kendala, New York? A. Yes. 7290
Q. Do you sell him anthracite? A. Yes.
Q. About what quantity annually? A. I should say four or five hundred tons.
Q. Do you know whether he handles any other anthracite? A. I understand he does.
Q. Do you know a man by the name of Covert at Lodi, New York? A. Yes.
Q. Do you sell him anthracite? A. We sell him antracite.
Q. How much would you say annually? A. It would be a very rough estimate; about 300 or 400 tons, pos- 7291
sibly.
Q. A small quantity? A. Yes, a small quantity.
Q. Do you know a man by the name of Kohler at MacDougall, New York? A. No.
Q. And you do not sell him any coal? A. No.
Q. Do you know a man by the name of Clark at Naples, New York? A. Yes.
Q. Do you sell him anthracite? A. No, we do not.
Q. Do you know a man by the name of Thompson at New Woodstock, New York? A. Yes. 7292
Q. Do you sell him any coal? A. Yes.
Q. About what quantity annually? A. Probably five or six hundred tons.
Q. Do you know whether he handles other anthracite? A. I don't know.
Q. Do you know a concern by the name of Olmstead & Sons at North Leroy? A. Yes.
Q. Do you sell them anthracite? A. Yes.

7293 Q. About what quantity annually? A. About six hundred tons.

Q. Do you know whether they handle other anthracite? A. I don't know.

Q. Do you know a man by the name of Lord at Mendon, New York? A. Rochester Junction; yes.

Q. Do you know such a man? A. Yes.

Q. Do you sell him anthracite? A. Yes.

Q. About what quantity annually? A. About 150 tons.

Q. Do you know whether he handles any other an-
7294 thracite? A. I do not.

Q. Do you know a man by the name of O'Brien at Seneca Falls? A. I do.

Q. Do you sell him anthracite? A. We do.

Q. About what quantity annually? A. 4,000 or 5,000 tons.

Q. Do you know whether he handles other anthracite? A. I don't know; not so far as I know.

Q. Do you have other customers in Seneca Falls? A. We do.

Q. Do you know a man by the name of Rackham at
7295 Stanley, New York? A. Yes.

Q. Do you sell him anthracite? A. We do.

Q. About what quantities annually? About four hundred tons.

Q. Do you know whether he handles any other anthracite? A. He does.

Q. Do you know a man by the name of Leet at the same place? A. No, I don't know him.

Q. Then you don't sell him any coal? A. No.

Q. Do you know a concern in Taughannock Falls by
7296 the name of Ovid Electric Company? A. Yes; I think we sold them a car of coal.

Q. Do you know whether they handle anthracite? A. No.

Q. Do you know a man in Victor, New York, by the name of Wilbur? A. I think he is out of business.

Q. Do you know a man by the name of Bruce in Vienna, New York? A. No; I don't. That is not my territory.

Q. Now, all these places I have named, if you know, 7297
will you tell us whether they are or are not other companies selling anthracite? A. Yes.

Q. Is there a place in your territory anywhere that you now can recall where there are other persons or concerns or individuals handling anthracite coal; I don't refer to little villages, but I mean in cases of any movement at all, or offering it for sale? A. No, there is no town that I know of where they are not offering coal for sale.

Q. In other words, you are in competition at all the 7298
points where you are merchandising anthracite coal with other dealers in anthracite? A. Yes.

Q. Are they in active competition? A. Yes.

Q. Have you any knowledge of any discriminatory favors or indulgences or preferences given Lehigh Valley Coal Sales Company in your territory by the Lehigh Valley Railroad? A. No, not any.

Q. Or any other railroad? A. No.

Q. And you at times have to pay demurrage by reason of detention of your cars, to the Lehigh Valley Rail- 7299
road? A. We certainly do.

Q. And are they not strict in the enforcement of their rules? A. They are.

Q. And you pay the published tariff rates? A. Yes.

Q. Could you tell us roughly about what tonnage of anthracite your sales amount to a year? A. The total of the agency?

Q. Yes. A. From a million and a half to a million and six hundred thousand; it is about in there.

Q. Now, generally speaking, is not the coal merchan- 7300
dised under what are spoken of as trade names? A. Yes.

Q. Don't you sell your coal under trade names? A. Yes.

Q. Will you give us, please, as far as you can now recall them, the trade names under which you merchandise anthracite? A. They go by districts. We merchandise such as Wyoming in the upper district, and Cross Creek, Packer, Jeddo and Highland, Lehigh generally named.

Q. When a customer buys coal of you—I mean a customer desiring to purchese any considerable quantity—

7301 or any customer—doesn't he always ask for your prices for a certain quantity of coal of designated sizes, always naming the size that he wants to buy? A. Oh, yes.

Q. You never heard of approaching a man with a certain quantity of anthracite coal in just those words, did you, without telling the size? A. No.

Q. He wants to buy so much of a size which he names, and so much of other sizes which he names? A. Yes.

Q. He names the size and he names the quantity, doesn't he? A. Yes.

7302 Q. And you have customers, I presume, who purchase coal under contract, haven't you? What I mean to say is, agreeing to take a certain tonnage within a certain time? A. Yes.

Q. Deliveries for the future covering a certain time? A. Yes.

Q. What is the longest time that you contract for the sale of coal to anybody that you can now recall in the last two years? A. At the close of our fiscal year, our coal year, generally the 31st of March to the succeeding March.

7303 Q. You did not get my question. What I want to know is supposing you were making a deal to-day with a man to sell him some coal, give me as near as you can recall an instance of a case which covers the longest time from to-day that you are going to deliver him that coal? In other words, don't you make time contracts for a year or less than a year; or more than a year? A. We generally in our office make our contracts—if we have such a contract, up to and including the close of our coal year. We have some—I think we

7304 have one locally or one running until July of next year. We have one closes October of this year; but usually we try to close them at the end of our coal year.

Q. What do you call your coal year? A. The 31st of March.

Q. It is now the last of July, 1914, is it? A. Yes.

Q. If you were making a deal with a man to-day you might make a deal with him that would cover the time from now until the 31st of March, 1915, do you mean by that—— A. 1915, yes.

Q. Would you decline to make one that would run over that, if you could make it, make an advantageous deal with a man? A. I don't think so. We don't have anybody ask us to do it. 7305

Q. Now, the time contracts generally are for, say, a month or two or three months, something like that? A. Orders are generally placed with us for specific tonnage.

Q. To be delivered how? A. Sometimes they will order only so many cars a week, but generally we get an order for so much coal. We don't have very many contracts in our territory. 7306

Q. And part of the deal is the time when the delivery shall be made? A. Yes.

Cross-Examination by Mr. Machen:

Q. Do you know whether all the premises leased to lessees in your district, in the list of lessees which Major Warren read to you from the paper, are located along the line of the Lehigh Valley Railroad? A. That list of lessees? 7307

Q. Yes. A. Yes, they are located on the line of the Lehigh Valley Railroad.

Q. You say that you understood sometimes that various ones of these lessees handled other coal than that of Lehigh Valley Coal Sales Company? A. Yes.

Q. Were you connected with the Lehigh Valley Coal Company prior to the formation of the Lehigh Valley Coal Sales Company? A. I was.

Q. On what information do you base your understanding that these lessees handle other coal? A. From reports that we receive from our salesmen from time to time as they do business with these concerns. 7308

Q. Your salesmen report to you that such and such a man is buying somebody else's coal? A. They report to us—our coal men report to us for various reasons they are buying coal from other sources.

Q. What other coal do they handle? A. What companies' coal?

Q. Yes. A. Whitney & Kemmerer, Mill Creek Coal Company; we have had C. C. Bowman, J. Langdon &

7309 Company, H. J. Churchill, of Syracuse; also O'Boyle-Foye Anthracite Company.

Q. That is one of the Bernice companies? A. Yes.

Q. Any others? A. Yes, the Northern Anthracite Company and the Connell Anthracite Mining Company at Buffalo and at all of the places along the line of the Lehigh Valley Railroad. We also have in these towns the D., L. & W. Company.

Q. What towns? A. Towns mentioned on that list.

Q. Not all of them? A. Not in all of them, but at
7310 some of the places we have the competition I have mentioned.

Q. Are any of those dealers located on the line of the D., L. & W. mentioned in this list? A. No.

Q. What I was asking about was, what coal, so far as your knowledge goes, other than that of the Lehigh Valley Coal Sales Company these lessees deal in; not what coal comes in competition with your coal at these particular towns, but what coal these particular lessees deal in? A. I guess I have given you that list.

7311 Q. That was the first list that you gave? A. Yes, and Ellsworth & Dunham (I think they are out of business now) at Montour Falls, New York. Skeele Coal Company—I don't know that they (Skeele Coal Co.) are selling any coal to those lessees; they are selling on the line of the Lehigh Valley Railroad.

Q. Does your coal come into competition with bituminous coal? A. Well, I presume—yes, our small steam sizes do come into competition with bituminous coal.

Q. Does the Bernice coal in your region command the
7312 same price as the coal from the regular anthracite regions of the same size? A. No. I think not. It sells less.

Q. How much less? A. From a dollar to a dollar and a half.

Q. Per size per ton? A. I think it does. I think it is about a dollar per ton.

Q. Do you come at any part in your district into competition with the Lykens Valley Coal? A. No.

Q. Not anywhere? A. Not in my territory.

Q. Do they sell steam sizes of Bernice coal though? 7313
A. Yes, they call it screenings, I think. We are in competition with the D. L. & W. Coal Company direct on one of those in that list that you have mentioned, or that is in that book that you say is a list of lessees. That is Cuddy & Geberin at Auburn.

Q. They are also on the line of the D. L. & W.? A. No, they get coal through the New York Central Railroad.

Q. They are on the line both of Lehigh Valley and the New York Central? A. Yes, and buy coal from the D. 7314
L. & W.

By Mr. Warren:

Q. Don't you, as a matter of fact, at times, have competition by bituminous dealers, even as to prepared sizes; in other words, are there not instances of competition with prepared sizes by bituminous dealers? A. Yes.

Q. So that you do not mean to be understood as saying that the only parties you have—— A. No, we have competition, of course, with bituminous coal. 7315

Q. As to all sizes? A. Yes, for domestic use.

By Mr. Machen:

Q. Do you at times contract to supply only steam sizes, or do you at times contract for prepared sizes as well? A. We have time contracts for prepared sizes.

Q. Do they specify the output of any particular mine at times? A. No.

Q. Do they specify the trade name of the coal? A. I do not recall any contract that way. We have very 7316
few that specify any trade name.

Mr. Warren: I offer in evidence from the 58th Annual Report of the Board of Directors of the Lehigh Valley Railroad to the stockholders for the fiscal year ending June 30th, 1912, a paragraph from page 13, which has already been read, as to the organization of the Sales Company, and I am going to ask the stenographer to copy that paragraph.

(The paragraph reads as follows):

"In January, The Lehigh Valley Coal Company, which has, since its incorporation, been engaged in the mining, shipping and selling of anthracite coal, caused to be organized a new company with the name Lehigh Valley Coal Sales Company, for the purpose of purchasing at the mines and shipping and selling all coal which it mined and purchased. The new company was created with an authorized capital stock of $10,000,000, of which $6,060,800, or 121,216 shares with a par value of $50 each, were immediately issued and the balance reserved for future needs. The privilege was accorded stockholders of the Lehigh Valley Railroad Company of subscribing to stock of the Sales Company for an amount equivalent to ten per cent. of their holdings. The Sales Company formally commenced business March 1, 1912. Neither the Lehigh Valley Railroad Company nor The Lehigh Valley Coal Company has any ownership in the stock of the Sales Company or any interest, direct or indirect, in the coal transported."

I next offer in evidence a list of stockholders of the Lehigh Valley Coal Sales Company of April 9, 1914, who were not stockholders of the Lehigh Valley Railroad Company on March 28, 1914, being a tabulation made up by utilizing the two lists of stockholders the Government offered in evidence, namely, the Lehigh Valley Railroad list as of March 28th, 1914, and the Lehigh Valley Coal Sales Company list as of April 9th, 1914.

Received and marked **Lehigh Valley Coal Sales Company Exhibit No. 38.**

William R. Evans recalled on behalf of the Lehigh 7321
Valley Coal Sales Company.

Direct Examination by Mr. Warren:

Q. You have already been sworn as a witness for the Government in this case A. Yes, sir.

Q. And you have told us, as I recall it, that you are the Vice-President and General Sales Agent of The Lehigh Valley Coal Sales Company A. Yes, sir.

Q. And have been for what length of time? A. I have held that title since September, 1912.

Q. Prior to that, and from March 1st, 1912, what was 7322
your position with the Sales Company? A. General Sales Agent.

Q. And from March 1st, 1912, to September, 1912, Mr. John W. Skeele was the President of the Lehigh Valley Coal Sales Company, was he not? A. He was until his death, which occurred in September, 1912. Yes.

Q. And actively in charge of the management of the company during that time? A. Yes.

Q. And directing its sales? A. Yes.

Q. Exclusively? A. Yes. 7323

Q. Your offices were at 90 West Street during that period? A. Yes.

Q. And are now? A. Yes.

Q. You were with the Sales Company then at its birth and throughout the few months which followed its start in business life? A. Yes.

Q. And daily in touch with the prosecution of its business? A. Yes.

Q. Especially the business of handling and selling anthracite and such bituminous as it was in, and also 7324
acting as a commission agent for certain persons? A. Yes, sir.

Q. Like Markle and others? A. Yes.

Q. Now, prior to March 1st, 1912, after the incorporation of your company, will you tell us what steps were taken by Lehigh Valley Coal Sales Company to acquaint the trade with the business they intended to go into and prosecute? A. Notices were sent to the trade in general——

7325 Q. I will stop you right there. Is this a copy of one of the notices sent to the trade? A. It is.

Offered in evidence and marked **Lehigh Valley Coal Sales Company Exhibit No. 39.**

Q. To whom did you send the notices, a sample of which I have just shown you and offered in evidence—I don't mean each name now, but I mean in what way did you send them out? A. We sent them to the Sales Agents and directed them to send them to the trade in
7326 general.

Q. And did you include in sending them broadcast, as you did dealers in anthracite that you might hope to get, to be customers of yours; in other words, to the trade generally? A. Yes.

Q. The greatest publicity, then, was given the notice of the inauguration of the Lehigh Valley Coal Sales Company as a dealer and handler of anthracite coal? A. That is true.

Q. Will you be kind enough to look at that memoran-
7327 dum, Mr. Evans, and tell me whether that is a correct list of the present executive officers of the company, and of the various agencies, their location and the names of the agents? A. It is.

The list was offered in evidence and marked **Lehigh Valley Coal Sales Company Exhibit No. 40.**

Q. Since starting in business you have been maintaining sale agency offices in how many places, and in
7328 what numbers; will you tell me, please? A. Fourteen places with sales agents, and we have over fifty salesmen traveling over the country.

Q. Are those sales agents of which you have spoken, that is, the fourteen, are they regularly employed agents upon salary? A. Yes.

Q. And do they represent the agents whose names appear in our Exhibit No. 40? A. They do.

Q. Now, will you tell us briefly in what States you started out doing business—I don't care to enumerate

them by name, but speaking of the country generally? 7329
A. I understand there is a difference of opinion as to the legal term "doing business" in a State; do you mean the State we ship anthracite coal to?

Q. And sell it in? A. We ship anthracite coal to all the States from Maine to the Missouri River, practically.

Q. And up into Canada? A. Yes, maritime provinces.

Q. And your agencies are only those appearing upon Exhibit No. 40? A. Yes, those are our only salaried agencies.

Q. They employ sales agents? A. Salesmen we call 7330
them.

Q. They employ salesmen to prosecute and develop the trade in the territory over which they are in charge as much as possible, do they not? A. They do, yes.

Q. Your instructions from your starting in business were to do what with your agencies as to the matter of developing trade and enlarging your trade? A. Our various agents were instructed to continue as they had been doing for the Lehigh Valley Coal Company.

Q. What was that? A. To develop the trade as much 7331
as possible in their respective territories.

Q. You took over the entire sales agency affairs of the Lehigh Valley Coal Company on March 1st? A. We did.

Q. Everywhere, wherever they had any business in the merchandising of coal, did you not? A. With the possible exception of the sales local at the mines.

Q. That is expressly excepted out of your contract with them of March 1st? A. Yes.

Q. You advertise in the trade journals and other publications to try to further and develop your trade, do 7332
you not? A. Yes.

Q. And have since you started business? A. Yes.

Q. You adopted a device which appears on your letterhead and other—at least some other papers of yours—a rectangular—almost a square—inside of which is the name "Lehigh Valley Coal Sales Company" printed, and within that a red diamond, and then a black interior? A. A black diamond in a red field. We did, yes.

7333 Q. And you use that as an advertising device, or as a sort of a trademark, so to speak? A. Yes.

Q. I think you have already stated what your position was with the Lehigh Valley Coal Company prior to March 1st, 1912, but will you kindly tell me again, immediately prior? A. Immediately prior?

Q. Yes. A. I was assistant to the Vice-President and General Sales Manager.

Q. In other words, you were devoting your time under Mr. Skeele, who at that time was the Vice-President and
7334 Sales Agent of the Coal Company in merchandising coal? A. Yes.

Q. For what length of time had you experience in that kind of work? A. Three years.

Q. First of all, the Government reiterates in the petition in this case, at page 11, an assertion which it has frequently made that anthracite is an article of prime necessity; what would you say as to the correctness of that statement? A. I do not consider it a correct statement.

Q. Will you tell us in what way anthracite is used and
7335 merchandised, and with what coal or other fuel it comes in competition with? A. Bituminous, semi-anthracite, gas and other fuels.

Q. It is largely used for what purpose through New England and the Middle Atlantic States and perhaps some sections of this country and in Canada? A. Domestic purposes.

Q. And the small sizes are known as what? A. Steam sizes.

Q. And they are in demand for steam purposes where,
7336 generally speaking? A. In large cities, such as Philadelphia and New York; in the east, and not at all in the western country.

Q. Do the steam sizes especially meet any competition with bituminous coal in these sections that you have spoken of, for steam purposes, or do they not? A. There is some competition, but it is, of course, restricted somewhat due to the smoke ordinances.

Q. What proportion of the total coal which you are in charge of, either handling or selling on commission,

would you say has come to harbor points within the last two years? A. Less than 12 per cent. 7337

Q. And the balance of the coal, whether you sell it on commission or purchase—I don't care about that for the present—is handled, broadly speaking, where? Is there any defined area that a large proportion of it is handled, or, would you say, it is scattered broadly through New England and the Middle States and Western Canada? A. I would say it is scattered broadly through those States.

Q. Will you tell us please what special steps you have taken during the two years to try to enlarge your sales and develop territory, in that which you then were, or new territory? A. We have maintained expensive sales agencies, as I have previously testified. With sales agents and traveling salesmen who travel the country east of the Missouri River, and the far points in Canada, and the north eastern part of the United States. We have moved some of our offices to more commodious quarters, giving them more modern offices in order to do their work. Taken additional office space at some other points. We have appointed various dock companies agents for the sale and handling and storing of our coal in the northwest. We have increased our pocket facilities at points, and we have spent some money for advertising at various points. 7338 7339

Q. Have you taken any steps in the territories that were not renumerative as of the date of your taking over the selling business of the Coal Company to try to make them remunerative, or, if I have gotten the wrong impression as to that, as to territories in which you found the Coal Company was selling coal, but not at a profit; have you tried to develop that territory in a way to secure either other customers, or better prices, at any rate, so as to make the territory a more advantageous one? A. We are continuing to sell in all territories that were formerly sold in by the Coal Company; and, of course, we are doing the best we can to get the best prices. 7340

Q. Are there territories to which you are selling anthracite that are not advantageous points due to either

7341 local condition, or inability to develop sufficient trade to pay for your expenses? A. Undoubtedly there are some such points. I don't know as I could name them.

Q. Now, mention has been made this morning of the trade names under which your company handles anthracite, are there any others than those I now name which I think have already been named, Packer, Cross Creek, Jeddo, Highland, Lehigh and Hazleton? A. Those are the names that we advertise under.

Q. And it is not a fact that you advertise under those
7342 names quite aside from the particular colliery or mine that the coal may come from? A. Yes.

Q. And do you not also handle coal which is called Wyoming coal without any other designation than just Wyoming coal? A. Do you mean to say in addition to the list you named?

Q. Yes. A. I thought you called Wyoming?

Q. I did not. A. We do sell Wyoming coal, and it should be one of the names that we advertise.

Q. And all these names are referred to in your various advertisements and circulars and uses of public print in
7343 order to develop business under those trade names, are they not? A. Yes.

Q. Will you kindly turn to page 7 of our answer. The statement is there made that our company sells over a million tons a year in Pennsylvania? A. Yes.

Q. Is that a fact? A. That is correct, yes.

Q. And you will note that following that there is a statement of tonnage at certain places in the State, that is, for the fiscal year ending March 31, 1914. That statement you have verified, have you not? A. Yes.

7344 Q. And is it correct? A. Yes. Philadelphia 456,637 tons; South Bethlehem 154,916 tons; Allentown 112,050 tons; Wilkes-Barre 66,453 tons; Easton 59,195 tons Phillipsburg 26,535 tons; York 14,443 tons; Harrisburg 10,406 tons; miscellaneous 295,213 tons; total 1,195,848 tons.

Q. Now, by miscellaneous, I assume you intend to cover a variety of little points and small sales not of sufficient moment to individualize, is that correct? A. Yes.

Q. What would you say as to the statement that New 7345
York harbor is the principal market for anthracite coal in the United States? A. I would say that is not so, so far as our company is concerned.

Q. As a matter of fact, what would you say as to advantage of the New York market as far as your company is concerned in comparison with the other places throughout the country where you are merchandising anthracite? A. I think it is one of the least desirable.

Q. In other words, it is a sort of a dumping ground? A. Yes, sir.

Q. By New York harbor you mean coal borne to New 7346
York and Brooklyn for consumption there? A. Yes.

Q. Have you verified the statement as to the tonnage your company either purchased or sold, or handled on commission at New York harbor points for this last fiscal year ending April 1st of this year; namely, 816,-053.03 tons? A. Mr. Urtch I think testified to that.

Q. You have verified it then through Mr. Urtch? A. Our accountant made that up at my request, and testified it was correct.

Q. At any time during the existence of the Lehigh Val- 7347
ley Coal Sales Company has there been any preference or discriminatory favors extended to your company by the Lehigh Valley Railroad Company in connection with shipments of your company on that railroad? A. No, sir.

Q. In any way, shape, form or manner? A. No, sir.

Q. You have paid demurrages in cases of detention of cars beyond their published rules and regulations? A. Yes.

Q. And you have seen a list which I have offered in evidence here which Mr. Summers prepared of a state- 7348
ment of demurrages paid, have you not? A. Yes.

Q. What advantage, if any, has your company in the matter of transportation of any coal it handles, whether purchased coal or coal it handles upon commission over any other shipper on the Lehigh Valley Railroad? A. It has none.

Q. Is there any different treatment by the Lehigh Valley Railroad of you as a shipper than there is of any other railroad over which you ship coal as a shipper? A. No, sir.

7349 Q. What instructions did Mr. Skeele give you, he being the first President of the company, and continuing such for a period of several months with reference to developing business, to advantageously handle the coal which you were handling upon commission, and generally with reference to the affairs of the company? A. He indicated to me a desire to increase our tonnage in the west and the northwest.

Q. Were they regarded by him as the largest markets? A. Desirable markets.

7350 Q. Didn't he tell you to do everything in your power to further the interests of the company, or substantially that, or did he assume that you would do that anyway? A. I cannot swear to that.

Q. You cannot remember any distinct statement of that kind? A. No, sir.

Q. Well, you have done it anyway, haven't you? A. Yes, sir.

Q. Up to what time prior to his death was he actively attending to business? Fix the date now as close as you can? A. I couldn't say whether it was the first of

7351 August, or the last week of July.

Q. Did he request you to join him in the proposed Lehigh Valley Coal Sales Company's list of employees, and associate in that business; did he ask you to go over to the Sales Company when it was organized? A. Yes.

Q. Were you one of the first Directors named? A. Yes.

Q. Did not Mr. Skeele ask you to become one of the Directors? A. He did, yes, sir.

Q. Do you recall a suspension in mining in the Spring

7352 of 1912? A. Yes.

Q. It covered about how many weeks? A. About seven weeks, I should say.

Q. Was there any occasion to anticipate that suspension or its results in the wage agreement then made with miners as of March 1st, 1912, or before that, I mean? A. No, sir.

Q. As a matter of fact, following that suspension and the resumption of work, if you can, state whether there was a raise in the price upon coal, and if so, state how

much and upon what sizes? A. There was an increase 7353
in the price of 25 cents a ton so far as the Lehigh Valley Coal Sales Company was concerned effective June 1st, 1912, on all sizes from broken to pea inclusive.

Q. Had you been selling under a circular price prior to that time? A. Yes.

Q. With notice of a discount of a certain number of cents per ton starting with April 1st? A. There was no discount in April, 1912——

Q. Excuse me, you anticipate me. You were selling on a circular price which provided for a discount prior 7354
to April 1st, 1912, were you not, and isn't it a fact that that discount was not allowed in 1912? A. That is true, yes.

Q. Now, who directed you to increase the price 25 cents per ton on prepared sizes and not to allow the discount from the circular price of April and May? A. Mr. Skeele.

Q. And so he was your authority for making the increase of which you have spoken? A. Yes.

Q. And you put them in force and effect? A. Yes.

7355

Mr. Machen: No increase in steam sizes?

The Witness: No, sir.

Q. And also the non-allowance of the 50 cents a ton on the discount circular in April —, and in fact, throughout that summer, or was it April and May? A. April and May.

Q. By the bye, that 50 cents a ton discount was applicable to what sizes of coal? A. On prepared sizes.

Q. Did it cover pea or did it not? A. No, sir.

Q. Now, was there any knowledge of any such changes 7356
in prices at the time of the organization of the Sales Company and your launching in business in the previous March? A. No, sir.

Q. So that that was an unexpected situation growing out of this suspension in work? A. Yes.

Q. What did that suspension in mining do in the way of the trade; what effect did it have on customers; did they get timorous? Just explain? A. It created an abnormal situation; an abnormal demand greater than the supply.

7357 Q. So that it was markedly an abnormal year? A. Yes.

Q. Did it have a marked effect upon the profits of your business not to have been anticipated in March for that year? A. I should say it did. We saved a great deal through the fact that it was unnecessary for us to dump any coal into storage, to speak of, that year. It all went to the trade as fast as it could be produced.

Q. Practically all sizes? A. Yes.

Q. And throughout the year, would you say? A. Un-
7358 til January, 1913.

Q. The winter of 1913, if we will start the winter with January instead of, as the Government does, with November, will you tell us what sort of weather you had, what sort of trade conditions there were in the early winter months of 1913? A. You mean 1913-14?

Q. I mean 1912 and 1913 with the winter starting January 1st, 1913, and—— A. The weather as I recall it that winter was very mild.

Q. The trade conditions that winter compared how with the trade conditions of this last winter of 1913 and
7359 1914? A. I think——

Q. Were they no better that winter than this? A. They were.

Q. Was that not due to the shortage in the supply of 1912, in fact, to the apprehensions of customers, and which was all quieted down by the winter of 1913 and the winter of 1914? A. That is correct.

Q. Take the current year, 1914, the calendar current year, are there any reasonable grounds to anticipate an abnormal demand or otherwise; what would you say so
7360 far as your company is concerned as to trade conditions in the year 1914; in other words, could you anticipate making as much money in the calendar year 1914 as you did the year 1912 and part of 1913? A. No, sir.

Q. Due to what? How about the winter before; how was the winter of this last one? A. The winter was very mild.

Q. Now give me any other reasons? A. And conditions are very backward.

Q. Are you stocking coal now? A. Yes.

Q. In large quantities? A. Yes. 7361

Q. Referring to page 35 of the petition, is it a fact that you have been dealing with the concerns named there on substantially—or substantially the same independent operators that are named there? A. I don't think so. I would not be in position to testify to that, though.

Q. Mr. Summers, I suppose, would be the one to testify? A. Yes.

Q. In other words, you would not be as familiar with the production of your coal as to its handling and selling it; that is your special province and line of work and employment? A. Yes. 7362

Q. I was not here when Mr. Markle was a witness, and I would like to ask you in what manner you are handling the Markle coal so far as the question of fixing prices and determining sales is concerned; how close a supervision and close control of those matters does the G. B. Markle Company—— A. He gives it the very closest possible supervision himself, just as closely in touch with the market as if he were our salaried employee.

Q. And does his company approve in each instance the sales before they are made? He instructs us as to what price we can quote, and what he desires orders for. 7363

Q. He dictates as to all prices? A. Absolutely.

Q. So that he would control the question of the place where the coal was sold as well as the party to whom if it were affected by the price? A. Yes.

Q. And this dictation of prices by him, does that affect all the coal you handle for markets at all places? A. Yes.

Q. And at all times? A. Yes, sir. 7364

Q. That dictated price, it involves, of course, the customer because the price comes from the customer——

Mr. Machen: I object to that assumption; it does not at all involve the customer.

Mr. Warren: I will withdraw the question.

Q. What have you to say as to what the relation of the price which he dictates has to do with the customer

7365 to whom the coal is sold? A. I would say that Mr. Markle's representative often accompanies our sales agent and calls personally on the trade and practically makes some of the arrangements himself.

Q. So that he is in touch at least with a portion of the tonnage you handle with customers as well as prices? A. Yes.

Q. The transportation of the product of the Markle Company so far as it is made over the lines of the Lehigh Valley Railroad is because of what? A. I would say because it is the most advantageous route.

7366 Q. You are familiar with the contract between the Markle Company and Lehigh Valley Coal Company which you are carrying out, are you not? A. I have read it, yes.

Q. You know that there is nothing in that contract controlling or attempting to control the route by which the coal is to be shipped, do you not?

Mr. Machen: I object to any question as to the terms of the contract, because the contract speaks for itself.

7367 Mr. Warren: I am very happy to have the Government counsel make that objection, because they have taken literally hours of time in this case to ask the witnesses to read from documents which speak for themselves.

Q. Now, I am going to ask you to do the same thing. I call your attention to Government's Exhibit No. 1, printed as an exhibit to the petition, and I ask you to read, following the practice of Government Counsel,

7368 from page 83, starting with the sentence starting "The party of the second part." A. (Reading.) "The party of the second part will at all times during the continuance of this agreement pay such tolls and freight as may from time to time be demanded by the Lehigh Valley and other railroad companies upon coal shipped by the party of the first part upon the orders of the said party of the second part from the line aforementioned."

Q. First calling your attention to certain statements in the petition and in our answer, because I want to get through with that first, upon page 48 of the petition is

a reference made to the mechanical storage plant at South Plainfield. Now, I want to ask you whether the cost of handling, that is the handling of anthracite per ton, at South Plainfield and Hudsondale plant is or is not very much lower than it would have been had it stored at those storage plants the same proportion of prepared sizes as you had then at other plants? A. It is. 7369

Q. During the period of the statement which the Government offers, being the one prepared by Mr. Summers and submitted to counsel, showing the cost of handling and storing, which includes those two plants among others, because it covers all the costs of handling and storage, what was the large proportion of the stock of coal at those plants composed of as to size of coal? A. Will you tell me the period that covers? 7370

Q. Well, I will say at any time during the existence of the Lehigh Valley Coal Sales Company then; generally as to your practice? A. A large proportion was steam sizes.

Q. The breakage in rehandling coal at the storage point as to steam sizes is what as compared with the breakage in rehandling and taking up of bigger sizes? A. The loss through breakage is naturally a great deal less on steam sizes, because it is not so valuable a commodity as prepared sizes. 7371

Q. And then it is a very much smaller size to handle, is it not? A. Yes.

Q. There would not be apt to be as much breakage of the pieces of the size of pea and buckwheat and barley and rice as there would be on egg and stove and broken? A. No.

Q. Let me ask you, have there not been times within your knowledge when you have had to sell, or had sold, certain of the steam sizes and certain quantities of them at certain storage plants at less than the figure that would represent the freight rate on those particular sizes as to those particular storage plants? A. Undoubtedly, sir. 7372

Q. Is not that an incident to the business? A. Certainly. We must get the best price we can, regardless of what it costs you for the freight rate.

7373 Q. So that in taking up stocks of coal the degradation due to rehandling increases to some extent the quantity of steam sizes as compared with that which was originally deposited there? A. Certainly.

Q. Is there a constant expense to the Sales Company in connection with the maintenance of the storage plants? A. Yes.

Q. The keeping of them up and repairs and renewals? A. There is, yes.

Q. Do you happen to know for what the sum of $6,000
7374 was expended on the South Plainfield plant for I think it was the first fiscal year? A. I don't know. I assume necessary repairs.

Q. Would you say it was the amount of repairs which ought to have been distributed over a series of years rather than those which were essential for that particular year and might require renewal again the next year? A. They were essential or they would not have been made.

Q. And those same repairs might be required again each successive year? A. Yes.

7375 Q. The South Plainfield plant was an old plant at the time you took it over as the Sales Company? A. Yes.

Q. And it has the appearance, hasn't it, of one of the older plants? That is almost unnecessary to ask. It would require more expenditures for renewals than for a more recently constructed plant. A. It is an old plant, and they are making extensive repairs this year.

Q. You have heard the testimony of Mr. Hamilton, your northern sales agent, residing at Buffalo, and of Mr. Stem, your sales agent at Allentown in charge of
7376 the territory from Bound Brook to Waverly, have you not, as to the competition those agents encounter at what are spoken of in this case as line points of the Lehigh Valley Road? A. I heard part of Mr. Stem's, and all of Mr. Hamilton's testimony.

Q. What have you to say of your general knowledge as advised by these sales agents of competition in the sales of coal? A. We are constantly in competition with other jobbers at all points.

DIRECT EXAMINATION SUSPENDED.

William R. McTurk, a witness called on behalf of the 7377
Lehigh Valley Railroad Company, being first sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. What is your business? A. Miner and shipper of anthracite coal.

Q. From what collieries? A. Hazle Mountain on the Lehigh Valley; Girard on the Philadelphia & Reading.

Q. Hazle Mountain on the Lehigh Valley Railroad? A. Yes.

Q. Who is the operator of that colliery? A. Hazle 7378
Mountain Coal Company.

Q. What is your relation to that company? A. President and principal stockholder.

Q. What proportion of the company do you own? A. Ninety per cent.

Q. How long have you been shipping over the Lehigh Valley Railroad? From Hazle Mountain nine years; prior to that we shipped from——

Q. Do you own any stock of the Lehigh Valley Railroad? A. No, sir. 7379

Q. Do you own any stock of the Lehigh Valley Sales Company? A. No, sir.

Q. At what particular points do you sell your coal? A. The line of the Lehigh Valley Railroad and its connections.

Q. And with whom are you in competition at your points of sale? A. With the Lehigh Valley Coal Sales Company and all other individual operators on the Lehigh Valley Railroad, and when we get over on the other side, the Pennsylvania.

Q. Your production is shown here, that is, the amount 7380
you shipped over the Lehigh Valley for the year ending June 30th, 1913, is shown at about 95,000 tons, is that a normal year? A. No. The year before was different; our shipments were about 135, if I remember correctly.

Q. You ship sometimes as high as 150,000 tons from the Hazle Mountain colliery? A. Yes, I think so, I think our production was that.

7381 Q. Does your tonnage from the Girard colliery on the Philadelphia & Reading come in competition with the Coal Sales Company at any point? A. Yes, when we get on the line of the Pennsylvania Railroad.

Q. You ship that tonnage through the lines of the Pennsylvania Railroad and then compete with the Sales Company? A. Yes.

Q. And others? A. And others.

Q. Have you ever seen the list of coal dealers set forth in the Government's petition in this case, pages 52 to
7382 55? A. No, I have not.

Q. I will show you that list and will ask you to look over it hurriedly and name some of the parties to whom you sell coal— their names? A. Here is Butz, we have sold Butz, if my memory is correct.

Q. Butz at Allentown? A. Yes. And Laubach at Allentown, and I think Koch Brothers. Of course, I am not familiar with all the names of our customers.

Q. Will you turn over to the next page? A. I am not familiar with the New York, because the coal is sent up to New York. We have sold Wertheim here at
7383 Newark; Fitzpatrick we have sold.

Q. Where are they? A. Picton, New Jersey; Ten Eyck & Harris, South Plainfield. That is all I can recall now. We have sold a great many in years, but I cannot recall their names.

Q. About how many customers have you? A. We divide our coal up into about 250 or three hundred people. We follow the market, and watch the conditions of the trade.

Q. You are in competition with shippers of coal on
7384 other railroads as well as the Lehigh Valley? A. Oh, yes.

Q. Is there a keen competition with respect to the sale of anthracite? A. Yes.

Q. How long have you been in the anthracite business? A. Forty years.

Q. Have you ever noticed any unfair treatment practiced by the Lehigh Valley Railroad Co. against you and in favor of your competitors, any of them? A. In favor of our competitors against us?

Q. Yes. A. No, sir; we sell our coal in the highest 7385
market at the best price we can possibly obtain for it.

Q. Has the Lehigh Valley Railroad treated you fairly in the way of car supply to your mines? A. Yes. I am positive that they have. Sometime ago I thought that we were not receiving fair treatment, and I purposely made an investigation, and I discovered after three or four days' investigation we were getting our pro rata of cars that came to the region.

Q. Have you noticed any unfair treatment of any kind practiced by the railroad in the way of the trans- 7386
portation of your cars or the imposition of demurrage or the collection of freight charges, or any other matters connected with the shipment of the coal? A. No, sir; we consider the Lehigh Valley very fair.

Q. Do you pay the rates on your coal—I mean, do you deliver at destination or at the mines? A. As a rule at the mines, f. o. b. mines; at some points we have to prepay freight.

Q. Have you ever had ground to complain of the charges for freight; in other words, rates charged by the Lehigh Valley Railroad? A. No. 7387

Q. Do you ship both north and southbound? A. Yes, and follow the market; wherever the market pays us we follow it.

Q. Is the New York market a good one for the sale of anthracite? A. Not for us individuals. We do not consider it so. We never come to the New York market unless there is a very great shortage of coal, and then we come here, and they pay more for it than anybody else would pay.

Q. The New York market is a kind of dumping 7388
ground? A. The New York market is considered a dumping ground. We have not shipped anything here in months, six or eight months past; possibly longer than that, and only occasionally.

Q. Were you a shipper under the old 65 per cent. contracts? A. No, sir; we have always marketed our own coal.

Q. Have you come in competition with those who sell their coal under the 65 per cent. contract? A. Yes; we

7389 have come in competition with them through the Lehigh Valley. The Lehigh Valley markets coal in Reading Railway territory.

Q. And you are able to compete with them? A. Yes, we are able to compete with them and move along.

Q. And make a profit? A. Make a profit.

Cross-Examination by Mr. Machen:

Q. How long has the Hazle Mountain Company been in the coal business? A. They were organized ten years
7390 ago.

Q. And have been in operation ever since? A. Yes, practically.

Q. You have a production in the neighborhood of—— A. 150,000 tons, we call it.

Q. Where do you reside? A. Philadelphia.

Q. You say you sell very little at New York? A. Very little in New York.

Q. Only in times of scarcity? A. Only in times of shortage and when we cannot market our coal. We
7391 have used it as a dumping ground at times.

Q. Because the profits are lower in New York? A. The profits are lower in New York than they are on the line.

Q. You say that the coal from the Girard colliery comes in competition with the coal of the Lehigh Valley Coal Sales Company? A. At Philadelphia, not on points of the Lehigh Valley Railroad. You see we ship both ways, via Lehigh Valley and Pennsylvania Railroad.

Q. You ship the Hazle Mountain coal by the Lehigh Valley? A. Yes, it originates there.

7392 Q. And the Girard coal by the Philadelphia & Reading? A. Yes.

Q. A great majority of the anthracite coal roads concentrate at New York, do they not? I mean to say, they converge at New York? A. Yes.

Q. And the same way the competition is keener at New York than at any other point, isn't it? A. Yes, as a rule.

Q. And the times of scarcity that you speak of when you do sell here in New York are times when the coal supply is insufficient on account of strikes, for instance? A. Yes; the shortage of coal. New York would always pay more money for anything they want, or Philadelphia will, over the lines of the Lehigh Valley Railroad. 7393

Q. What do you mean by saying that New York was not a good market for "us individuals," I think you said? A. "Us individuals," because we simply get more money at other points. The individual will not put his coal in a low market unless he is compelled to. 7394

Q. But the railroad companies do? A. The railroad companies do, yes; they apparently do; they are supplying the market.

Q. But you sell some coal in New York too? A. No, only in a shortage, or use it as a dumping ground.

By Mr. Boles:

Q. Who operated the Hazle Mountain colliery before the Hazle Mountain Coal Company was organized? A. That was abandoned for a great many years, and we reopened the colliery. 7395

Q. What other railroad is near that colliery? A. The Pennsylvania Railroad.

Q. How far away? A. About three and a half miles.

By Mr. Machen:

Q. That is the Hazle Mountain colliery? A. Yes.

Q. With respect to coal which you ship over the Reading from the Girard colliery do you get in competition with other independents? A. Oh, yes.

Q. You also come in contact with the Philadelphia & Reading Coal & Iron Company? A. Yes. 7396

Q. Do you find them as formidable a competitor on the line of the Reading as the Lehigh Valley Coal Sales Company on the line of the Lehigh Valley Railroad? A. They are drumming the trade very sharply.

7397 **Leo Stem,** recalled.

Direct Examination by Mr. Warren:

Q. Do you know a man by the name of H. M. Speece? A. Yes.

Q. Is he a salesman of yours? A. Yes.

Q. Where is he located? A. Wilkes-Barre.

Q. Do you know whether he covers the territory including Harvey's Lake? A. Yes.

Q. Do you know whether he has been selling coal to the Lake Transit Company? A. Yes.

7398 Q. I suppose that is a pleasure resort? A. Yes.

Q. That lake is reached so far as the railroad is concerned by the Lehigh Valley Railroad alone, is it not? A. Yes.

Q. By this Harvey's Lake branch from Wilkes-Barre? A. Yes.

Q. Did you receive this letter that I now show you dated July 13th, 1913, from Mr. Speece, your salesman there? A. Yes.

7399 Letter offered in evidence and marked **Lehigh Valley Coal Sales Company Exhibit No. 41.**

Q. Will you tell me please in what territory Mr. Speece handles coal for you? A. Between Waverly and White Haven, including the coal region.

Q. Did you ask him to make a memorandum for you of the competition he encounters with other purchasers and sellers of anthracite coal in his territory? A. Yes.

Q. A week or so ago? A. Yes.

Q. Is this the statement which he prepared in con-
7400 formity with your request? A. Yes.

Q. Will you tell me please whether he comes in competition with the Plymouth Coal Company in that territory? A. Yes.

Q. The East Boston Coal Company? A. Yes.

Q. Thorne Neale & Company? A. Yes.

Q. The Kingston Coal Company? A. Yes.

Q. The Evans Coal Company? A. Yes.

Q. C. C. Bowman? A. Yes.

Q. The Delaware, Lackawanna & Western Coal Company? A. Yes. 7401

Q. Pennsylvania Coal Company for the Hillside? A. Yes.

Q. Dodson & Company? A. Yes.

Q. Heilner & Son? A. Yes.

Q. Peale, Peacock & Kerr? A. Yes.

Q. Mill Creek Coal Company? A. Yes.

Q. Whitney & Kemmerer? A. Yes.

Q. Are there any others that you can recall aside from the list I have made there of producers and sellers, or sellers in his territory with whom he comes in competition? A. Not that I can recall. 7402

Cross-Examination by Mr. Machen:

Q. At what points does the Coal Sales Company through Mr. Speece come in competition with the Delaware, Lackawanna & Western Coal Company, or with the Hillside Coal & Iron Company, or the Pennsylvania Coal Company? A. The Delaware, Lackawanna & Western meet us at Montrose; that is in Mr. Speece's territory. 7403

Q. How about the Hillside and the Pennsylvania Coal Company? A. Well, the Hillside, they get in along points of the Lehigh Valley at Wilkes-Barre.

Q. And where else? A. At Wilkes-Barre and Pittston.

Q. Are those the only places? A. To my knowledge.

Q. And the only places where the D., L. & W. comes in competition with your company through Mr. Speece is Mr. Speece's territory at Montrose? A. And also at Sayre and Waverly. 7404

Q. These are all points reached by the D., L. & W.? A. Yes.

Q. And also by the Lehigh Valley? A. Yes.

Q. Do you know how large a place Montrose is? A. I imagine about four or five thousand people.

Q. And Sayre is about—— A. Sayre is fifteen thousand.

Q. Are those points reached by any other railroad than the D., L. & W. and Lehigh Valley Railroad? A. I think the Erie comes into Waverly.

7405 Q. Do you come in competition with the Hillside Iron Company, or the Pennsylvania Coal Company at Waverly? A. No, I am quite sure about that.

By Mr. Warren:

Q. You do come in competition at Waverly with the D., L. & W. and the other companies, do you not? A. Yes, at Waverly, yes, but not at Sayre.

By Mr. Machen:

7406 Q. At Waverly you do come in competition with the Hillside Coal & Iron Company? A. Yes.

Q. But not at Sayre? A. No, they are right together.

Q. Sayre and Montrose are reached only by the Lehigh Valley and the D., L. & W.? A. Yes.

Q. At those points you come in competition with the D., L. & W. Coal Company? A. Yes, and the shippers over the Lehigh Valley.

Q. The independent shippers? A. Yes.

By Mr. Warren:

7407 Q. See if I cannot refresh your recollection with some more names of people who come in contact with you; M. D. Crowley, do you know such a man as that? A. Yes; he is a shipper at Mauch Chunk; he ships over the entire Lehigh Valley; he mines Coleraine, which is on the Lehigh Valley Railroad.

Q. Weston, Dodson & Company, do you come in competition with them? A. They handle Beaver Brook.

Q. I don't care what they handle, do you come in competition with them? A. Yes, they ship over the Le-

7408 high Valley.

Q. J. S. Wentz & Company? A. Yes.

Q. They ship over the Lehigh Valley? A. Yes.

Q. Madeira, Hill & Company? A. Yes.

Q. Mill Creek Coal Company? A. Yes.

Q. W. R. McTurk & Company? A. Yes.

Q. Baker Brothers? A. Yes.

Q. Lehigh Coal & Navigation Company? A. Yes.

Q. Lehigh & Wilkes-Barre Coal Company? A. Yes.

Mr. Machen: This is general only as to all these 7409
points?

Mr. Warren: Parties with whom he comes in competition who are purchasers and sellers, or at any rate, sellers, in the territory which he is in charge of.

Mr. Machen: Not confined to Mr. Speece's territory?

Mr. Warren: Not at all.

By Mr. Machen: 7410

Q. Where do you come in competition with the Lehigh & Wilkes-Barre Coal Company? A. All points east of Mauch Chunk; take Mauch Chunk, Slatington, Catasauqua, Montrose, Bethlehem, Easton, Phillipsburg, Plainfield, Somerville.

Q. Those are all points in the State of Pennsylvania? A. No, some in New Jersey.

Q. They are all points reached by the Philadelphia & Reading Railway as well as by the Lehigh Valley? A. Yes, and the Central Railroad of New Jersey.

Q. You say by the Central Railroad of New Jersey? 7411
A. Yes.

William R. Evans, recalled.

Direct Examination (Continued) by Mr. Warren:

Q. You have no relations with the Yates-Lehigh Coal Company premises at Louisiana Street, Buffalo, and had no lease for it, is that right? A. We have not. 7412

Q. Did you ever prepare a schedule which I now show you of persons named in Government's petition, pages 52 to 55, the location of the premises, and from information from your sales agents the dealings, if any, with such persons so listed? A. Yes.

Q. And is that the statement? (Showing witness paper)? A. Yes, sir.

Mr. Warren: I offer this in evidence.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 42.**

7413 Mr. Macbeth: In behalf of the Government we object to this exhibit in so far as it purports to state estimates of amounts sold to said lessees by other companies than the Lehigh Valley Coal Sales Company, this being a matter of opinion upon which the compiler of the exhibit is not shown to have any knowledge; and also to so much of the exhibit as purports to state the purport or effect of tariff from the collieries on roads other than the Lehigh Valley Railroad, or from
7414 collieries not operated by the Lehigh Valley Coal Company, because the tariffs themselves are the best evidence.

Q. In other words, the broad statement you can make, can you not, that as to this list on pages 52 to 55 of the petition the Sales Company sold them on varying conditions, either you have or have not sold them any coal and to others you sell a fractional part of their supply, and some are out of business, and as to some others you sell you think all they handle? A. Yes.

7415 Q. In view of the objection of counsel will you tell us please, how you went to work up this statement? A. We communicated with the sales agents in charge of each of the territories in which the various plants named in the Government's petition were located, and asked them to give us the information which we have included in the statement.

Q. So that you do not pretend that it is first hand information gathered by you individually? A. No, sir.

Q. But you asked them to ascertain the exact facts,
7416 did you not? A. Yes.

Q. And this is the result of there efforts, and it is tabulated correctly as the information was furnished you? A. Yes, and I believe it to be correct.

Q. Now, turn to page 17 of the answer, those properties that are named there, referring to certain leasehold estates referred to in Government's petition, page No. 55, were taken over by the Sales Company from the Coal Company at the time of its organization, and as a part of the contract between the two companies, as you understand it, was it not? A. Yes.

Q. And to enable the Coal Company to get out of all its shipping and selling of anthracite and to get rid of these premises and yards, did it not? A. Yes. 7417

Q. And you took them just as the conditions were in reference to the leases, and took assignments of the lands, did you not? A. We did.

Q. What would you say as to these leases so far as your company is concerned in its business, whether they are or are not an advantage to you in the disposition of coal? A. I would say that the volume of business done through those yards is very unimportant.

Q. I suppose some are advantageous to a slight extent? A. Yes, sir, and some are not. 7418

Q. Whatever provisions there were in these leases, if any for these yards which you took over, either as to routing coal or coal to be purchased, will you tell us as to the extent, if any, attention has been paid to them by your company in any way? A. Not any.

Q. Have you ever undertaken to ascertain by inquiry or otherwise what these concerns are doing in the way of routing coal, or what they are doing in the way of the quantity purchased from your company? A. Absolutely nothing as to the routing, and as to the tonnage, of course we keep a record of the tonnage purchased by each customer. 7419

Q. Solely for the purpose of trying to get them to buy more, I suppose? A. Yes.

Q. But do you keep a record of it for the purpose of undertaking to enforce any covenant in any lease, if there be any, as to minimums? A. No, sir.

Q. I do not know now as to whether there are any in any of these leases, or all of them, and I do not care, but the point is, do you pay any attention to it in any way? A. No, sir. 7420

Q. Do you know whether they purchase coal exclusively from your company; do you pay any attention to that? A. I do not.

Q. In other words, since you have acquired these leases you have sold to these persons to the extent to which they desired to purchase with no restrictions as to shipments, or as to the amount that they must purchase? A. Correct.

7421 Q. Have you ever given any instructions to any of your sales agents, or salaried men, or commission men, or other agents, to undertake to enforce any provision either as to routing of coal anywhere or as to quantity to be purchased by any customer of yours, or lessee of yours? A. None.

Q. That they have got to buy so much, or anything like that? A. No, sir.

Q. Will you say it was true that your company dominates the market along the line of the Lehigh Valley
7422 Railroad?

Mr. Machen: Objected to as a matter of opinion on question of law.

Mr. Warren: To which I reply that it is an opinion, but it is inserted in the Government petition by way of argument, and I submit I am entitled to have a specific denial of the assertion and opinion of the Government's counsel who prepared this petition on this subject.

7423 A. No, sir.

Q. What would you say as to the charge in the Government's petition, page 6, that the Sales Company completely dominates the market at all points on the Lehigh Valley Railroad not reached by other railroads?

Mr. Machen: Same objection.

A. It is not so.

Q. You have been a director throughout the existence of the life of the Lehigh Valley Coal Sales Company?
7424 A. Yes.

Q. And attended its meetings regularly, have you not? A. Yes.

Q. To what do its directors devote their attention? A. To the transaction of the business of the Lehigh Valley Coal Sales Company.

Q. Have you ever heard of any effort at any domination by the Lehigh Valley Railroad, Lehigh Valley Coal Company, Coxe Brothers & Company, incorporated, or any of the corporation defendants named on the cover

there of the Government's petition over your company, or any attempt to dictate its management in any way? A. No, sir. 7425

Q. In your efforts to increase and enjoy the business of each company, have you not been obliged at times in establishing new agencies, or any attempt to withdraw present agencies, enlarging their output, to sell at practically no profit, and in fact, at a lower, having in view your fixed charges and expenses in attempting to handle business at those places? A. Undoubtedly that is true.

Q. In taking over the—or the carrying out of the contract between the G. B. Markle Company and Lehigh Valley Coal Company, which, of course, was on a commission basis, you handled that coal how in connection with the other coal which you are dealing in, no matter how you acquired it, is it sold in conjunction with it? A. By our same sales agencies force. 7426

Q. Tell me how they do it; I don't mean about fixing prices. A. I understand. I thought you meant the physical handling of the coal. Of course, the coal is kept separate, but the same salesmen sell it as sell all of our coal. 7427

Q. Does that enable you to handle that coal at a materially less cost than if you were simply handling it alone? A. I would say yes.

Q. There is no doubt about that? A. No doubt.

Q. Now, the prices for the coal you handle other than that which is on commission you fix, do you not? A. Yes, under the direction of the president.

Q. And you have spoken of those which were established and you were directed to enforce and carry out by Mr. Skeele? A. Yes. 7428

Q. And since that time you have yourself, independent of anybody, other than Lehigh Valley Coal Sales Company men, at all times fixed prices, haven't you? A. Yes.

Q. You have given instructions to your agency force around the country generally as to matters of prices from time to time? A. Yes.

Q. To make such deals in the matter of prices as they can in view of possible customers? A. Consistent with good business, yes.

7429 Q. You had in the year 1912 practically two months of no production, did you not? A. Yes.

Q. That, of course, lessened the supply and the opportunity for sale as to volume of business that year, did it not A. Yes.

Q. It enabled you to clean out all the storage coal that you had purchased from the coal company? A. Practically so; there may have been some odds and ends even carried over.

Q. Speaking broadly as to such storage coal, what
7430 length of time is it in storage; that is, or may it be in storage? A. It may be for years. I should say there I was told by our Auditor that some of the coal we purchased from the Coal Company had been in stock since 1902.

Q. In putting coal in storage you frequently have to do it so there is some coal already stored, don't you? A. Yes.

Q. Then isn't the coal piled on top of that which is in storage? A. Yes.

Q. So you make deposits gradually? A. Yes, sir.

7431 Q. Now, in shipping that if the demands of the market are not large enough to take out all of that pile of the various sizes, each size by itself, some of the first deposited coal may be there for years, isn't that so? A. That is true, yes.

Q. Did you take over any contracts from the Coal Company running for various lengths of time with customers which they had? A. There were many unfilled obligations.

Q. Will you please look at the Exhibit attached to the
7432 Government petition, No. 3, I think, being the printed copy of the Sales Company contract with the Coal Company upon page 101 of the Government's petition; do you recall those sales contracts being taken over by your Company? A. Most of them, yes. They are not all sales contracts, I might say.

Q. Tell us which are not sales contracts in this list; some are assignments? A. Some are handling contracts.

Q. What is the difference between a sales contract and 7433
a handling contracts? A. A handling contract provides for the handling; it does not necessarily provide for the sale.

Q. In other words, as sort of agents for you? A. Yes.

Q. On a commission basis or something of that kind? A. Usually, yes. For instance, the C. C. West contract, Rochester, is a handling contract; it is not a sales contract.

Q. Would it be practicable for you to make up a list 7434
of the contracts—the sales contracts, I mean? A. Yes.

Q. Which you took over from the Coal Company as of March 1st, 1912? A. I would say not.

Q. Have you made a list of the contracts now in force that your company has entered into for the sale of coal to different concerns at different places? A. Yes.

Q. And is this that list?, (showing witness paper)? A. Yes.

Q. The first of those it headed "Line sales offices": those are contracts that are made to your sales agency forces at certain places on the line of the Lehigh Val- 7435
ley Railroad, is that it? A. Yes, sir.

Mr. Warren: I offer this list in evidence.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 43.**

Q. The next is headed "New York office, July 24, 1914. Contract for broken coal." Does that mean the size broken? A. Yes.

Q. The next sheet is "Contract for pea coal"; the next 7436
sheet "Contract for buckwheat coal"; the next sheet "Contract for rice coal"; the next sheet "Contract for barley coal"; and the next sheet "Contract, Jersey City office for certain sizes," and these lists give the date of expiration of these contracts, do they not? A. Yes.

Mr. Warren: I offer these lists in evidence.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 44.**

7437 Q. You also have a similar list prepared by the Chicago office, Philadelphia office, Buffalo office, Syracuse office, have you not? A. Yes, sir.

Mr. Warren: I offer these also in evidence.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 45.**

Q. Just one question in connection with these. Have you made a memorandum of what these represent in the way of tonnages? A. Yes.

7438 Q. Is that a correct statement or summary of them as to tonnage (showing witness paper)? A. It is.

Q. Won't you please read it? A. 2,048,950 tons.

Recess Until 2.15 o'clock P. M.

After Recess.

George H. Foster, recalled.

Direct Examination by Mr. Boles:

7439 Q. Have you prepared a statement entitled "Comparative statement of rentals of certain coal trestles under Lehigh Valley & Pennsylvania Railroad Plans," showing the rentals collected for the properties at Grand Street, Jersey City, Pioneer Street, Newark, Irvington, South Plainfield and Rochester, and the rentals which the Pennsylvania Railroad would have collected under their plan of leasing as described by Mr. Large yesterday? A. I have.

Q. Are the figures as to the assessed valuation of the
7440 various properties on here correct? A. Yes, except as noted thereon.

Q. How did you make the apportionment as to a few of the trestles which you refer to hereon? A. The apportionment of the assessed valuation is made as to the land by taking the comparative area of the land leased to the entire land assessed as to the improvements, by estimating the value of the improvements, the estimate being made for taxation purposes.

Mr. Boles: I offer that statement in evidence. 7441
Received and marked **Lehigh Valley Railroad Exhibit No. 90.**

Q. If the Lehigh Valley Railroad Company leased all its surplus lands and the improvements thereon, in other words all its property which it held for prospective railroad purposes, at a rental of four per cent. plus taxes, insurance and maintenance to be paid by the tenants, would you say that it would net the company a greater or less return, in the long run, than if it adopted 7442
the plan of charging five per cent. on the assessed valuation of the land, and ten per cent. on the assessed value of the improvements, and the railroad company itself paying all the taxes and insurance and maintenance? A. I think the railroad company would come out better under the Lehigh Valley plan than under the Pennsylvania plan.

Q. In other words, under your plan you think the railroad company will get more returns than if it adopted the Pennsylvania Railroad plan? A. I do.

Q. Now referring to this exhibit, what amount of 7443
taxes must be deducted from the Pennsylvania Railroad revenue, applying the Pennsylvania Railroad rental basis to the South Plainfield property? A. The taxes on the South Plainfield property approximate $2,800 a year.

Q. And do you know about what the maintenance charge averages a year on that property? A. No, I don't know as to the maintenance charge on the property.

Q. Well, is it considerable? A. I should think it 7444
would be considerable, because it is considerable of a plant. It has a lot of mechanical parts in it, which of necessity must require considerable maintenance, being mostly machinery, and that, as a rule, requires a great deal of maintenance.

Q. Well, deducting the taxes of approximately $3,000 from the $18,000 it leaves $15,000 plus as against the actual rental we collect of $13,000, or a margin of about $2,000 for maintenance? A. That would hardly be suffi-

7445 cient, in my judgment, to cover the maintenance for repairs to the property from year to year.

Q. In other words, you think the margin would not be sufficient to cover the maintenance of a plant of that kind? A. Yes, and another thing, the taxes would increase, and do increase every year on it, either the valuation goes up or the rate goes up, generally the rate goes up, and it is a matter within my knowledge, that taxes on property are increasing every year, so that under the Pennsylvania plan their tax bill would be
7446 larger every year and their net return would probably be correspondingly smaller; under the Lehigh Valley plan, so-called, the tenant pays the taxes, and it makes no difference to the railroad company, whether taxes increase or not.

Cross-Examination by Mr. Machen:

Q. Do I understand you to say that by the Pennsylvania plan you mean the plan which Mr. Large testified to here a day or two ago? A. Yesterday, yes.

7447 Q. And your understanding of his testimony was that the Pennsylvania Railroad in fixing its rentals is guided by the assessed value of the land by the taxing authorities? A. I so understood him to say yesterday.

Q. Not the value of the land as appraised by the railroad, and the value of the improvements as appraised by the railroad, but by the value placed upon them by the taxing authorities of the State, County and Municipality in which the property may be situated? A. I heard him use the words "assessed value," yesterday.

Q. And you jumped at the conclusion that that is
7448 what he meant?

Mr. Boles: I object to that question.

The Witness: I heard him say "assessed value" yesterday. I heard him say five per cent. on the assessed value of the land, and ten per cent. on the assessed value of the structures.

Mr. Boles: That has one meaning, and only one meaning.

The Witness: That can only have one meaning, to my mind.

Q. Do you not know it to be a fact that the assessments, 7449
for the purposes of taxation vary greatly in different parts of the country, and even in different counties in the same State; that is to say, that in some places property is regularly assessed, or some effort is made to assess property at something approximating its actual value, whereas in other places property is uniformly assessed very much below its actual value?

Mr. Boles: I will admit that; that is one of my reasons for criticising the Pennsylvania Railroad plan. 7450

Mr. Machen: They never had such a plan.

Mr. Boles: They said they had, and their own witness said so yesterday.

The Witness: I will admit that, if you except the State of New Jersey; in 1911, the State of New Jersey made a very comprehensive valuation of all railroad property under the direction of Charles Hansel for the use of the State Board of Assessors, and they valued railroad property, all of it, at very close to full value, and on a very uniform and even basis. 7451

Q. These valuations of the property, so far as they lie in New Jersey were the valuations that were placed upon the several properties by the New Jersey authorities at that time? A. Yes, by the New Jersey authorities.

Q. Were these—— A. You mean the New Jersey State authorities?

Q. Yes. A. No, not all of them.

Q. State what authorities have to do with the assessing? A. Well, in New Jersey the law requires the 7452
State Board of Assessors to assess all property used for railroad purposes, and that is uniformly at true value. There are, however, one or two cases where the localities assess property which is used for railroad purposes. It arises largely out of a mistake, but the situation is unchanged because the rate is the same. Most of these assessments of New Jersey are made by the State Board of Assessors. I think the Grand Street pockets are assessed locally.

7453 Q. Did the Lehigh Valley Railroad Company make returns for the purposes of taxation of these various properties? Were they required to answer? A. No, the Lehigh Valley Railroad Company is required to return to the State Board of Assessors in each year a statement of the improvements, additions or deductions, from its property in the State of New Jersey, not a return of all of its property every year.

Q. But at the time of this revaluation which you spoke of under the authority of the State Board of Assessors?
7454 A. No, they did not require any comprehensive return at that time.

Q. Did the railroad company appear before the State Board of Assessors and make representations as to the value of these properties? A. No.

Q. They had no hearing upon the subject? A. They had a hearing, but we did not appear. They offered us a hearing, we had an opportunity to appeal under the law, but we did not appeal on these properties.

Mr. Boles: In other words, we accepted the
7455 State Board of Assessors figures?

The Witness: We did.

Mr. Boles: And paid the taxes on them?

The Witness: And paid the taxes on them.

Q. You have not figured out what the result would be if you applied the Pennsylvania plan, so-called, to Mr. Wilgus' valuations; that is to say, you have not figured out what the rental would be upon taking five per cent. of Mr. Wilgus' valuation of the lands, and 10 per cent. of his valuation of the improvements? A. No, but ob-
7456 viously it will be more than the four per cent.

Q. It would be obviously very much more than the four per cent. plus the taxes and insurance, wouldn't it? A. Certainly, the higher rate of percentage you use, the higher results you get.

Q. All of these leases whether for short terms or for more than a year contain a termination clause, do they not? A. Yes, all subject to thirty days' notice of termination, I think.

Q. Yes. So that if circumstances should arise which 7457
in your judgment would justify a higher rental, it would be within your power to exercise your rights under the termination clause and raise the rental, wouldn't it? A. Yes, if I thought I could get more rent out of any tenant I would raise the rent on any tenant.

Q. That would be the case whether your rental was calculated on the so-called Pennsylvania plan or upon what you call the Lehigh Valley plan? A. Yes.

7458

S. B. Thorne, a witness called in behalf of the Lehigh Valley Railroad Company, being first duly sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. What is your business? A. I am in anthracite coal mining and selling anthracite coal.

Q. And your office is located where? A. No. 1 Broadway, Thorne, Neale & Company is my immediate office.

Q. How long have you been in that business? A. I 7459
have been in the mining of anthracite coal since 1897, in the selling of it since about 1909, I think.

Q. You sell coal at points along the line of the Lehigh Valley Railroad? A. Yes, sir.

Q. How long have you been selling at points along the Lehigh Valley Railroad? A. Ever since we started in the wholesale business.

Q. In 1909? A. Yes.

Q. Did you compete with the Lehigh Valley Coal Company while it was selling along the line of the railroad? 7460
A. We competed with everybody selling along the line of the railroad, the Lehigh Valley Coal Company as well as other people.

Q. Have you competed with the Lehigh Valley Coal Sales Company since it has been organized and has been selling along the line of the railroad? A. The same as everbody else, yes, sir.

Q. Are any of your shipments made entirely on the Lehigh Valley Railroad? In other words, from mines on the railroad to points on the railroad? A. Yes.

7461 Q. The Government says in its petition in this case that the Lehigh Valley Coal Sales Company dominates the markets at points on the line of the Lehigh Valley Railroad not reached by any other railroad. Have you found that to be so? A. No, sir, I have not.

Q. You have sold there? A. They are the largest sellers on the railroad.

Q. That is because they are the largest buyers? A. They are the largest buyers, and have the biggest tonnage; aside from that I don't think that they dominate
7462 it.

Q. You have been able to sell in competition with them, haven't you? A. Yes, sir.

Q. And have actually sold in competition with them? A. We have.

Q. Did you recently answer an advertisement which appeared in the public papers as to the sale of certain stocks of subsidiary companies belonging to the Temple Iron Company? A. I did.

Q. Did you make a bid for those properties? A. Yes, sir.

7463 Q. What was the result? A. The bid was successful and we purchased the properties.

Q. Do you own any stock in the Lehigh Valley Railroad? A. No, I do not.

Q. Do you know whether any of your firm does? A. None of my firm does, I am confident.

Q. Or in the Lehigh Valley Coal Sales Company? A. No, sir.

Q. Did you buy the stocks of the subsidiary companies of the Temple Iron Company on your own account or
7464 on account of your firm? A. On my own account. The firm had nothing to do with the purchase.

Q. Was that a bona fide offer for the purchase of these properties made strictly on the basis of the advertisement, and in the way of competition in the open market? A. Absolutely.

Q. When did you obtain possession of the stocks of these subsidiary companies? A. On June 30th, last.

Q. 1914? A. 1914.

Q. And have remained in possession since? A. Yes, 7465
sir.

Q. Did you pay for them on that day? A. We paid for them on that day. I say I remained in possession since the purchase of the stocks. We formed a company to take over the stocks.

Q. That is the Temple Coal Company? A. That is the Temple Coal Company.

Q. Then you transferred these stocks to that company? A. To that company.

Mr. Warren: You took possession June 30th. 7466
And had the earnings from what day?

The Witness: The advertisement specified that it was as of April 30th, the date that the bids went in, and from that date on we had all the earnings, and we bought all the assets that the companies possessed previous to that time, including cash in the treasury.

Q. So that you took possession June 30th as of May 1st, you might say? A. Yes, sir.

Q. But you mean the actual transfer of deeds and 7467
title papers, etc., was made June 30th? A. Yes, the cash passed at that time.

By Mr. Boles:

Q. By that purchase you acquired the entire capital stock of the Northwest Coal Company and the Edgerton Coal Company? A. Yes.

Q. And the Sterrick Creek Coal Company? A. Yes, sir.

Q. And the Babylon Coal Company? A. Yes, sir. 7468

Q. The Mount Lookout Coal Company? A. Yes, sir.

Q. The Forty-Fort Coal Company? A. Yes, sir.

Q. The Lackawanna Coal Company, Limited? A. Four-fifths of the stock of the Lackawanna Coal Company, Limited; that is all The Temple Iron Company owned of the Lackawanna Company, Limited; the other one-fifth was owned in private ownership.

Q. Not owned by the Railroad Company? A. No.

7469 Q. You mean the private ownership of individual parties? A. Individual parties. The Temple Iron Company had never owned that. The estate of John S. Law owns it.

Mr. Warren: He was one of the men that formed the company, and he died, so that it is now the estate of John S. Law.

Q. You were a bona fide purchaser of these stocks and entirely apart from and not in any way in privity with
7470 any of the defendants in the old Reading case, that is the various railroads who were known as the anthracite railroad carriers and the various coal companies whose stock is owned by those different railroads? A. I had no connection with them whatever in any way.

Q. And you were not in privity with any of them in any way in making this purchase? A. No, sir, none whatever.

Q. Do you sustain any relation or interest, direct or indirect, by trust or otherwise, to any of them? A. In no way.

7471 Q. Do you now? A. No, sir, I do not.

Q. Did you comply with all the terms and provisions and conditions of the advertisement as it appeared in the public press? A. We did, yes, sir.

Q. Did you personally sign and send the letter which bears your name S. B. Thorne, addressed to Walter Briggs, April 29, 1914? A. In regard to the purchase.

Q. In regard to the purchase? A. I did, yes, sir.

Q. And the supplemental letter of April 30th, 1914, in respect of the purchase? A. Yes, sir, that letter also.

7472 Q. Have any of the anthracite carrying railroads any interest in any way in the Temple Coal Company? A. None whatever to my knowledge. The preferred stock of the Temple Coal Company has been sold generally, and who has purchased it I don't know.

Q. Sold in the open market? A. In the open market, yes, sir.

Q. Do you know who holds the common stock? A. They have no interest in the common stock whatever.

Mr. Machen: Has the preferred stock any voting privileges? 7473

The Witness: I beg pardon.

Mr. Machen: Has the preferred stock any voting privileges?

The Witness: Yes, the preferred stock has voting privileges.

Q. And what is the proportion between the preferred and common stock? A. There is $2,000,000 preferred and $1,000,000 common.

Q. Where was the preferred sold? A. Sold all over, in Philadelphia, in New York and Scranton. There is a lot of it held up there by individuals in Scranton. 7475

Q. Sold through Brown Brothers? A. Through Brown Brothers, and through various people, for they underwrote it with other various firms; they had charge of putting it out.

Q. In connection with issuing that, did not you authorize circulars by your bankers that the preferred stock and bonds were to be paid off, sinking funds therefor being provided in the mortgage, so far as the bonds were concerned, prior to any enjoyment of the fruits of the purchase? A. Yes, that is right. 7475

Q. In other words, the common stock is to make the money if any is made out of that property? A. That is exactly it, yes. The preferred stock will all be retired before the common stock—

Q. (Interrupting) The preferred stock then is in the nature of an obligation following bonds? A. Absolutely, yes.

Q. And only to share in the profits or earnings of the company to the extent that is provided in the certificate? A. That is all. 7476

Q. Which is at what rate? A. Eight per cent.

Q. The bonds being at what rate? A. Five per cent.

Cross-Examination by Mr. Machen:

Q. What was the issue of the bonds? A. $2,500,000.

Q. Were they sold on the open market? A. They have been sold on the open market. The advertisement

7477 originally stated that forty per cent. of the bonds would be accepted as part payment of the purchase price.

Q. Accepted by the Temple Iron Company? A. By the Temple Iron Company, yes, sir. And the bid was made on that basis, and afterwards the bonds owned by the railroad were purchased by Brown Brothers, and sold by them in the open market.

Q. You say owned by the railroad. You mean owned by the railroads through their ownership of the stock of the Temple Iron Company? A. Yes, sir.

7478 Q. Who suggested the purchase to you? A. Well, it is pretty difficult to say, in my mind, whether I suggested it myself, or whether Mr. Hemelright, who was at that time general superintendent. I had had it in mind for some time, if the Temple were sold, to try to make a bid for it.

Q. You say that you had been engaged for several years past in the business of selling coal? A. Yes, sir.

Q. But not of mining? A. Well, I have been interested—I was originally in the mining end of it, and that eventually took me into the selling end of coal, so

7479 that of later years I have been interested in selling personally, and actively, although still retaining interest in the mining end of some operations.

Q. What is the name of your firm? A. Thorne, Neale & Company is the name.

Q. Does your firm own any mines, or operate any mines? A. The firm itself does not, no. Mr. Neal and myself have the interest in the operating end.

Q. What mines do you operate? A. The Darkwater Coal Company, and the Buck Run Coal Company, in

7480 Schuylkill County, and we operate the Sonman Shaft Coal Company, and the Bens Creek Coal Company in the soft coal field, and also operate in Canada, up in Northwestern Canada.

Q. Did Brown Brothers & Company finance the transaction? A. Yes.

Q. Did you approach them about the matter? A. I approached them, yes, sir.

Q. Who was Mr. Hemelright? A. He was General Superintendent up there in the company, and I put him in that position years ago.

Q. In the Temple Iron Company you mean? A. In 7481
these subsidiaries of the Temple Iron Company.

Q. When you bought the stock of the subsidiary companies, you bought with it the earnings which they had accumulated for about three years past? A. Yes.

Q. That amounted to how much, do you know? A. It amounted to something over $2,000,000.

Q. As a coal operator have you been a shipper over the Lehigh Valley Railroad? A. As a coal operator I have not, no.

Q. None of your mines are located on the line of the 7482
Lehigh Valley? A. No, sir, none of my mines are located on the lines of the Lehigh Valley Railroad.

Q. Of course, through the Temple Coal Company you will henceforth be a shipper over it? A. Well, I have, not by marketing the product of our mine, but we have done a general middle house business, and have acted as agents for other coal mines, among others the Kingston Coal Company, that ship on the Lehigh Valley, the Hillman Coal Company of Wilkesbarre, which ship entirely on the Lehigh Valley.

Q. You have marketed their coal for them? A. Yes, 7483
sir.

Q. Have you always been able to realize from your coal, or rather the coal of the Kingston Coal Company and the Hillman Coal Company along the line of the Lehigh Valley Railroad, approximately as good prices as those realized by the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company? A. We have to do so or we would not have had the coal to sell, because the price at which the tariffs permitted us to sell the coal was such that if we could not have sold it at 7484
as good prices they would have sold it through somebody else.

Q. Do you live in New York? A. Yes, I live in New York.

Q. In marketing the coal of the Kingston Coal Company and the Hillman Coal Company along the line of the Lehigh Valley, have you ever been able to realize any appreciable greater amount than the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Com-

7485 pany in normal times? A. We have at times been able to secure a better price than their circular price. I don't know what price they may have been securing at times of abnormal conditions.

Q. Yes, but in normal times you could not get any more than they get? A. Well, we don't usually try to get more than they get. We try to get, as a general—the price all over for anthracite coal, in various regions, it sells at different prices, and that is the price that we usually sell it at.

7486 Re-Direct Examination by Mr. Warren:

Q. You have to, in order to sell coal, haven't you? A. Yes.

Q. You can hardly expect in normal times to get a higher price for coal than your neighbor gets? A. No.

Q. Unless personal element enters and you sort of put it over a man? A. Yes.

Re-Direct Examination by Mr. Boles:

7487 Q. Have you always had fair treatment from the Lehigh Valley as a shipper? A. Absolutely, I have got no kick on the Lehigh Valley.

Q. The Government thinks we are terrible discriminators, but nobody else seems to know anything about it? A. Well, we have not found you so, sir, as a shipper.

Leo A. Stem, recalled, testified as follows:

7488 Direct Examination by Mr. Warren:

Q. I call your attention to Coal Sales Company Exhibit No. 42, which, among other things, has upon it the rates in effect from collieries on roads other than Lehigh Valley Railroads, from certain points, and also the tariffs by the Lehigh Valley Railroad, naming certain rates from collieries not operated by Lehigh Valley Coal Company. Did you have anything to do with making the inquiries as to the persons whose names appear upon this list in the territory over which you are in charge as to the

matters of the rates of the railroads, and of the tariff? 7489
A. Yes, sir.

Q. Did you examine the tariffs of the other railroads named on these sheets to ascertain whether the rates in effect from the collieries on those roads, whether there were rates in effect from those collieries on those roads?
A. Yes, sir.

Q. And does this sheet correctly state the result of your information as to the cases within your territory, and also as to whether the rates are the same from collieries, in other words, the last two columns? A. Yes, 7490
sir.

Cross-Examination by Mr. Machen:

Q. You say that this column headed "Are rates in effect from collieries on roads other than L. V. R. R., if so, what railroads," was prepared upon information furnished by these various lessees?

The Witness: Yes, sir.

Q. Did you make any independent examination of the 7491
tariffs yourself? A. I looked at the tariffs on file on the Central Railroad, that is the only railroad there is.

Q. There are several other railroads mentioned on this sheet? A. No, not on that sheet, not on that page.

Q. Not on that page? A. This applies to Allentown, and I went to the Central Railroad and looked at their tariffs.

Q. Then the only portion of the Coal Sales Company Exhibit No. 42 as to which you have attempted to testify is that portion thereof which relates to Allentown? A.
That is all. 7492

Q. That is this page here? A. Yes.

Q. And you say you looked at the Central Railroad of New Jersey's tariff in Allentown? A. Yes.

Q. And found—does the Central Railroad of New Jersey reach Allentown? A. Yes.

Q. And you found, when you examined the tariff did you, that the rate from collieries along the line of the Central Railroad of New Jersey to Allentown was the same as the rate of the Lehigh Valley Railroad from collieries along its lines to Allentown? A. Yes.

7493 Q. Those you examined? A. Yes.

Q. These various leased premises are located, as I think you testified when you were on the stand before, along the line of the Lehigh Valley Railroad, are they not? A. Yes, sir.

Q. They are not along the line of the Jersey Central Railroad? A. They are side by side.

Q. The two railroads are side by side at that point, are they? A. Yes, sir, they are within a hundred yards in some places of each other.

7494 Q. Well, are all those various lessees situated at that portion of the lines of those two roads which are so close together? A. No, sir.

Q. Some of them are farther removed? A. Yes, sir.

Q. And then they are farther removed— A. (Interrupting.) Well, they vary. All these parties here, that is, these lessees here, are in the lower end of the city where they are pretty close to the Central, the lower end of the city.

Q. Well, their premises, however, are actually reached only by the Lehigh Valley Railroad? A. Yes, sir.

7495 Q. Not reached by the Central? A. That is, some buyers here are not reached by the Central, their dumps and bins are located on the Lehigh Valley.

Q. Yes. And what you mean by saying that the tariff on the Central Railroad of New Jersey is the same as on the Lehigh Valley simply is that if they shipped over the Central they could get the coal to Allentown? A. Yes.

Q. To some place in Allentown on the Central Railroad of New Jersey, at the same price that they could

7496 get it to their own premises over the Lehigh Valley? A. Yes, sir.

Q. But of course, if they got it on the Central they would have to haul it by team to their yards? A. Surely.

Re-Direct Examination by Mr. Warren:

Q. Or get the use of yards on the line of the Jersey Central? A. Yes, sir.

Q. Or sell it without yards, isn't that true? A. Yes, they could do that.

William R. Evans recalled. 7497

Direct Examination by Mr. Warren:

Q. In connection with the shipment of anthracite over the Lehigh Valley Railroad by the Lehigh Valley Coal Sales Company in the last two years, what differences if any have arisen as to the question of the tariffs as published, or in any other regard with which you are familiar, will you tell me please? A. Well, we have found that we are at a disadvantage at some points and have taken the question up with the railroad companies and asked for equal rates with other shippers. 7498

Q. With what result as to that fact? A. Well, we have been unsuccessful in securing rates to some points, and are still pursuing our request.

Q. Well, you asked for such rates to those points? A. Yes, sir.

Q. Now, calling your attention to specific instances, do you recall making a request or demand, whatever the right expression is, as to rates near Utica, New York? A. Yes, sir.

Q. Just explain that please? A. We found that to meet the competition in that territory east of Utica the prices named by our competitors, we could not afford to meet it, and we asked the Railroad Company to name us a rate equal to the D., L. & W. and other shippers to that territory. 7499

Q. And they declined to grant it A. They have.

Q. And are you still pressing that upon them, trying to get it? A. Yes, sir.

Q. In case of your failure to get their consent to grant such rate, what is your purpose to do with reference to that? A. Well, with the permission of the President I shall push it and take it up with the proper authorities. 7500

Q. What would be the proper authorities? A. I should say the Interstate Commerce Commission.

Q. Now, do you not recall an instance of their announcing, as I understand, under the present law they have to, some thirty days before a tariff goes into effect, a raise in the rate on anthracite coal to Chicago? A. They issued a tariff to that effect, yes, sir.

7501 Q. And that was a matter in which you were interested, was it not? A. Yes, sir.

Q. That is to say your company was shipping coal over the Lehigh Valley? A. Yes.

Q. Jointly with other roads to Chicago? A. Yes, sir.

Q. As that road does not run to Chicago? A. Yes.

Q. And did you take steps to urge the restoration of the old rate? A. I prepared a statement which I presented to our President with a suggestion that he protest against that tariff becoming effective.

7502 Q. About that time you learned it had been suspended by the I. C. C., did you? A. Yes, sir.

Q. Now, tell us any other instances, if any, you have in mind, of their declining to do things in connection with the shipments of coal which you asked for? A. We have asked for a rate to Chicago in connection with the Pennsylvania Railroad equal to rates via other routes, rates by other roads.

Q. In what way would it be of advantage to your company, and why did you ask it? A. Because we have

7503 customers located on that road in the City of Chicago.

Q. And the deliveries therefore would be more convenient, more advantageous, by the Pennsylvania than Lehigh Valley to those customers? A. Yes.

Q. What was the result of that? A. We were advised that the Pennsylvania Railroad Company——

Q. (Interrupting). You were not advised. You took it up with the Lehigh Valley people did you? A. Yes.

Q. Well, did they advise you? A. Yes, sir.

Q. Well—— A. (Interrupting.) They advised us.

Q. First of all, did they agree to it? A. They declined

7504 to grant it.

Q. What was their excuse for declining? A. Their excuse was that the Pennsylvania Railroad would not join them in such a rate.

Q. Have you in mind to recommend to the President taking up that matter with the I. C. C.? A. I certainly have.

Q. You believe you have a fair ground of complaint as against the Lehigh Valley Railroad do you, to their declination of your request as to that matter? A. As to

which road I am not sure, but we have a fair ground to 7505
ask for that rate.

Q. You mean by that, you don't know whether the complaint should be against the Lehigh Valley or the Pennsylvania? A. Yes.

Q. If it were done voluntarily it would require the consent of both roads to put the rate into effect? A. So I understand.

Q. From whom do you understand that? A. I cannot say. I understand that all railroads that are party to a tariff have to consent to it. 7506

Q. Did your Sales Company ever have anything to do with a lease known as the Obuck lease of the premises occupied by Obuck? A. I never heard of it.

Q. You purchase the coal from certain companies that were vendors in 65 per cent. contracts with the Lehigh Valley Coal Company before your organization, did you not? In other words, you carried out those contracts, did you not, until cancelled the last of May, 1913? A. Yes, sir.

Q. A. Pardee & Company, was that one? A. Yes, sir. 7507

Q. And the Raub Coal Company? A. Yes, sir.

Q. And the Mount Lookout Coal Company? A. I can't recall all of them. I think so.

Q. Government's Exhibit No. 63 is the lease to the Thomas W. Dalton, made by the Coal Company with Mr. Dalton, and assigned to the Coal Sales Company on the 1st of March, 1912. Is that lease now in existence? A. No, sir.

Q. Is Mr. Dalton living? A. I could not say. He is not in the coal business to my knowledge.

Q. Are the premises vacated? A. We surrendered 7508
the premises to the owner.

Q. That is, to the Lehigh Valley Coal Company? A. Yes, sir.

Q. When did you do that? A. The 1st of August, 1913.

Q. Will you tell us if there have been any differences as between your company and the Lehigh Valley Coal Company in the matter of sizes delivered to your company by the Coal Company during these last two years? A. We are continually after them to keep their preparation up.

7509 Q. That is not what I mean now. That is inspection. Do you not recall that you required them to change the size of the mesh over which they were preparing, I think it was stove coal, so as to make that size of coal conform to the size which would be shown by the mesh as appearing in the contract of March 1st, 1912? A. I recall that the President had some correspondence with them to that effect, yes, sir, as to the size of coal. I am not sure whether it was stove; it may have been chestnut.

7510 Q. Now, take the coal which your company is handling, aside from that which you are buying from the Lehigh Valley Coal Company, can you give me an approximation as to its tonnage, have you examined that? A. Exclusive of the Markle tonnage it is in the neighborhood of a million and a quarter tons annually.

Q. Have you a statement of the persons or concerns from whom you purchase that coal? A. No, I have not. I can get it for you.

Q. Is that outside of Coxe Brothers & Company, Inc.? A. Yes, sir.

7511 Q. It would include, would it not, the coal that you get from Pardee and the Mt. Lookout and Forty-Fort and Harry E and Raub, or Louise, which is Raub? A. Yes.

Q. And so far as you know, that is the list which would make up the tonnage which you purchase? A. Yes, sir.

Q. Do you know a periodical known as "The Coal Trade Journal" in the City of New York? A. Yes, sir.

Q. I show you the front page of this periodical of the number issued June 17, 1914. Is that your advertisement on the front page? A. The Lehigh Valley Coal

7512 Sales Company, yes, sir.

Mr. Warren: I offer it in evidence.

(Marked **Lehigh Valley Coal Sales Company Exhibit No. 46.**)

Q. Do you know a periodical known as the "Black Diamond"? A. Yes, sir.

Q. Both that and the Coal Trade Journal are published here in New York, are they not? A. The Black Diamond is published in Chicago.

Q. Well, the Coal Trade Journal is published in New 7513
York? A. Yes, sir.

Q. And they have, or I assume they at least claim to have the largest circulation? They certainly have some circulation, haven't they, among the coal trade, both anthracite and bituminous? A. Yes, wholesale and retail.

Q. I show you an advertisement in the Black Diamond in its issue of June 27th. Will you read that advertisement? A. The Skeele Company, distributors Lehigh Coal and Navigation Company's well known anthracite 7514
coals for Canada and the West via Buffalo, also shippers bituminous steam, gas and forge coals, the Skeele Coal Company Marine Bank Building, Buffalo, New York; New York Office, No. 90 West Street.

Q. Has the Skeele Coal Company any relation by stock ownership or otherwise with the Lehigh Coal & Navigation Company? A. I am unable to say as to that.

Q. So far as you know has it? A. No, sir.

Q. I show you an advertisement in the same issue 7515
of W. R. McTurk & Company. Will you read the first three lines of that advertisement? A. "Hazlebrook has more heat in it and made more satisfactory customers than any coal mined in the Lehigh region."

Mr. Boles: Is that the same Mr. McTurk who was here and who testified to-day? A. Yes, sir.

Q. I show you an advertisement on the other side of that same sheet of the Black Diamond and that is the advertisement of Thorne, Neal & Co., is it not? A. Yes, 7516
sir.

Q. And that is the company the senior member of which is the gentleman who was on the stand to-day? A. Yes, sir.

Q. I notice this advertisement here speaks of them as being at 601-606 Stephen-Girard Building, Philadelphia? A. Yes, sir.

Q. And then they say "Anthracite coal, Lehigh, Wyoming, Schuylkill, New York, Philadelphia, Baltimore, Buffalo, Coalport, Trenton, New Jersey, interior Lake

7517 ports, shipments rail or water." I have read that correctly, haven't I? A. Yes, sir; it is a full page ad, as I see it.

Q. (Reading) "Branch offices, Chicago, Boston, Baltimore"—even Baltimore and Mauch Chunk. Does that all appear there? A. Yes, sir.

Q. Now, what does Coalport mean in connection with Trenton, New Jersey, is that a different place? A. That is a station for loading boats on the canal.

Q. In the vicinity of Trenton? A. Yes, sir.

7518 Q. Now, I show you an advertisement page 58 of that same number of the same periodical. Will you read the one of Bowman, and then will you read the one of the D. L. & W. Coal Company? A. (Reading) "C. C. Bowman, anthracite coal, bituminous. Miner and shipper. North Wilkes-barre, Best Wyoming, Lopez, Big Vein, Lehigh and other grades anthracite. Sole shipper and mine agent. Perfection, Smithing, best, gas, white oak steam and other grades bituminous, Connellsville coke, etc. Address all communications to 119 William Street, Pittston, Pa. Anthracite shipments made by rail or
7519 water via P. R. R., P. & R. R., L. V. R. R., and their connections."

Q. Read the one of the D. L. & W. Coal Company? A. "Delaware, Lackawanna & Western Coal Company's Scranton coal. Two large covered docks. Shipments all railroads. The S. C. Schenck Co., sales agent. C. L. Dering, Manager Chicago Office, Old Colony Building. Soft coal department, Island Creek, West Virginia Splint, re-screened at Sekitan Elevator, Cincinnati. When you buy Scranton, be sure you get the genuine
7520 D. L. & W. Scranton."

Q. I ask you to read another page 59, that is headed "Dependable Coal." Will you read the balance of that? A. (Reading) "Dependable Coal. We own and operate the mines producing Mid-Valley, Hazlebrook, Upper Lehigh and Mary D, and are sole agents for Central Coal Company's Wyoming anthracite coal. We are exclusive sale agents for Abrams Creek bituminous. We also sell Big Vein, Georges Creek and Lilly Keystone smithing coal. J. S. Wentz & Co. Mary D. Coal Co.,

Midvalley Coal Co., Upper Lehigh Coal Co., Anthra- 7521
cite and Bituminous Coals. 1727 Land Title Building, Philadelphia, Pa., 1436 Dime Savings Bank Building, Detroit, Mich."

Q. These collieries in this dependable coal advertisement, are some of them to your knowledge situated on the lines of the Lehigh Valley Railroad? A. Yes, sir.

Q. I show you another advertisement of Whitney & Kemmerer. Just tell us whether that is not a full page advertisement of Whitney & Kemmerer? A. Yes, sir.

Q. And it starts out with a statement that they have 7522
offices in Philadelphia, New York, Boston, Pittsburgh, Buffalo, Altoona and Mauch Chunk, doesn't it? A. Those cities are named.

Q. The home office being Philadelphia? A. Yes, sir.

Q. It announces that they are miners and shippers of anthracite and bituminous coal, and as to the Lehigh region all mines, Sandy Run, Honeybrook, Harwood and Latimer, doesn't it? A. Yes, sir.

Q. How many of those are on the line of the Lehigh Valley Railroad? A. Two to my knowledge.

Q. Which? A. Harwood and Latimer. 7523

Q. In Wyoming region it names the Oliphant, Chauncey, Kingston, Gaylord, Hillman. How many of them are on the line of the Lehigh Valley Railroad? A. I am not positive. I know Kingston ships over Lehigh Valley, and I think Hillman.

Q. Let us look at the Coal Trade Journal for a minute, issue of July 15. That is quite recent. I will read from this Journal an advertisement appearing on an advertising page which is not numbered. (Reading.) "Van-Dusen Brothers & Co., Anthracite coal, coke, bituminous, 7524
Stephen Girard Building, Philadelphia. General Sales agents Pardee Brothers & Co., Inc. Big Vein, Latimer, Lehigh, Red Ash in New York and New England territory by Frederick A. Potts & Company, 143 Liberty Street, New York." Do you know whether the Latimer colliery is on the line of the Lehigh Valley Railroad? A. Yes, sir.

Q. I notice another advertisement in this issue which I will read into the record (Reading): "Frederick A.

7525 Potts & Company, anthracite coal, bituminous. Sales agents and shippers of Wilkes-Barre White Ash, Plymouth, Red Ash, Honeybrook, Lehigh. Shipments from Port Johnstone, Elizabethport, New Jersey and all rail to eastern points. General offices 143 Liberty Street, New York." Here is an advertisement of Peale, Peacock & Kerr, Grand Central Terminal, New York. Do you notice that egg shaped central design in the center of that ad? A. Yes, sir.

Q. Is that, would you say, in the nature of a trade de-
7526 vice or a trademark? A. I would so term it.

Q. Do several of the dealers in anthracite have trade marks or devices which they utilize in developing their property? A. Yes, sir.

Q. I show you one of the Lehigh Valley Coal Sales Company.

I will offer this sheet in evidence.

(Marked **Lehigh Valley Coal Sales Company Exhibit No. 47.**)

7527 Cross-Examination by Mr. Machen:

Q. Does the Lehigh Valley Coal Sales Company sell any coal in the southwest? A. In the southwest?

Q. Yes. A. I don't know what you mean by that.

Q. Well, say St. Louis, Louisville, Cincinnati? A. Yes, sir.

Q. Well, do you sell any coal in Pittsburgh? A. I don't believe so now.

Q. Why not? A. Because we have no customers there that I know of.

7528 Q. They all use bituminous coal? A. I think we have offered them coal there this year.

Q. How do you get it to Pittsburgh? A. Ship it by railroad.

Q. Do you sell any coal—according to your answer you sell some coal in Harrisburg? A. Yes, sir.

Q. How do you get it to Harrisburg? A. Ship over railroads.

Q. Over what roads? A. Over Lehigh Valley and Pennsylvania Railroads.

Q. Where do you deliver it to the Pennsylvania? A. I think it is Gum Run Junction, wherever—we deliver to the Lehigh Valley and they do the delivering to the Pennsylvania I guess. Their tariffs cover all of that. I can not testify off hand to the junction points. 7529

Mr. Warren: They could ship to Allentown and then to Harrisburgh?

The Witness: Yes, they could.

Q. Do you know whether there are any joint rates over the Reading at Allentown? A. To Harrisburg? 7530

Q. Yes, for collieries on the Lehigh Valley? A. I could not say.

Q. Do you sell any coal in Baltimore and Washington? A. Yes, sir.

Q. How do you reach those points, over what road? A. By routes as provided in the tariffs.

Q. You don't know what they are? A. I would not want to say offhand, no, sir.

Q. Among the trade names which you have mentioned as applicable to certain varieties of anthracite coal was Wyoming coal? A. Yes. 7531

Q. Is this trade name applicable to all coal mined in the Wyoming region? A. Yes, sir.

Q. Are there any subdivisions of Wyoming coal, anything to indicate more specifically the portion of the Wyoming region from which the coal comes? A. No, not that I am aware of.

Q. State, if you know, how your shipments of coal to Chicago are moved? A. You mean via what routes?

Q. Yes. A. Well, they are various—Lehigh Valley and Lake Shore & Michigan Southern, Lehigh Valley & Michigan Central, Lehigh Valley & Grand Trunk. 7532

Q. The first two connect at Buffalo, do they? A. In that vicinity.

Q. And the Grand Trunk connects at Niagara? A. I would not say just the junction; in the neighborhood of Buffalo.

Q. And Suspension Bridge? A. Lehigh Valley & Wabash, Lehigh Valley, Buffalo, Rochester & Pittsburgh

7533 and Baltimore & Ohio, Lehigh Valley, New York, Chicago & St. Louis, and Pennsylvania Railroad.

Q. Where do they have connection with the Lehigh Valley? A. At Buffalo, I think. Lehigh Valley & Pennsylvania Railroad.

Q. Where does the Lehigh Valley connect with the Pennsylvania? A. Near the mines.

By Mr. Warren:

Q. You haven't mentioned any of the Lake Trans-
7534 portation lines? A. Lehigh Valley and the Great Lakes.

Q. Well, the different lines? A. Different lines by the Great Lakes.

Q. Boat lines, you mean? A. Yes.

Q. Pere Marquette? A. Yes, sir. In fact, all roads between Buffalo and Chicago.

By Mr. Machen:

Q. Does the Lehigh Valley Transportation Company operate a line to Chicago? A. I cannot say.

Q. Are the contracts for deliveries of coal, Sales Com-
7535 pany coal, kept in your custody? A. I don't understand the question.

Q. Have you the custody of the contracts, the written contracts for sales of coal, time contracts of the Coal Sales Company? A. They are in the hands of the various sales agents.

Q. Then you have not the custody or possession of the various contracts for the sale of coal referred to or listed in the Coal Sales Company's Exhibits Nos. 43, 44 and 45? A. We have copies of them.

7536 Q. You have copies at your office? A. In my office, yes, sir.

Q. Of all of those contracts? A. Yes, sir.

Q. Those are all time contracts, are they? A. Those listed.

Q. Those listed in these Sales Company's Exhibits Nos. 43, 44 and 45 are all time contracts, and they apply mostly to the steam sizes, don't they? A. Yes, sir.

Q. There are only a very few contracts for the prepared sizes? A. That is true.

Q. And these are mostly for egg or broken coal? A. 7537
I would have to look over that list to familiarize myself with it.

Q. Now, you have practically no time contracts for the sale of chestnut and stove coal, isn't that so? A. I would not want to say we have none. They would be very few.

Q. Very few, indeed? A. Yes.

Q. Now, these contracts are mostly with manufacturers, are they not? A. No.

Q. Well, the so-called steam sizes are almost exclu- 7538
sively used for manufacturing purposes, aren't they? A. No, sir.

Q. What are they used for? A. Heating large buildings in large cities like New York and Philadelphia.

Mr. Warren: Even Scranton, small as that is.

Q. You mean office buildings and apartment houses? A. Yes, sir.

Q. Why are they called steam sizes? A. Because they produce steam. 7539

Q. Any of the sizes will do that, won't they? A. If they are properly used.

Q. But at any rate they are not used for domestic purposes to any extent? A. No, sir.

Q. Therefore they are consumed at large or comparatively large cities, isn't that so? A. And large manufacturers.

Q. And by large manufacturers? A. Yes, sir.

Q. In other words, they are not consumed, as a rule, in rural districts? A. I would say not.

Q. You have been familiar with the coal business cer- 7540
tainly since 1900, have you not? A. I think I have, yes, sir.

Q. What changes in the price of coal have taken place, what notable changes? I don't refer to mere casual fluctuations? A. Since 1900?

Q. Yes. A. There was an advance after the big strike of 1902.

Q. That was one change. How much was this advance on the average, do you know? A. I don't recall, no, sir.

7541 Q. That was accompanied by an agreement with the miners or laborers, approved by or formulated by the Strike Commission, wasn't it? A. I could not testify to that. That is a matter of general knowledge.

Q. Then what other increase was there? Wasn't there one in 1912? A. After the strike of 1912 there was.

Q. How much was that? A. 25 cents per ton on sizes broken to pea inclusive.

Q. How much on smaller sizes? A. There was no advance on the smaller sizes.

7542 Q. By which companies was there no advance in the small sizes? A. I am testifying as to the Lehigh Valley Coal Sales Company.

Q. You did not have occasion to notice the actions of your competitors? A. We are continually watching the actions of our competitors, but I could not testify as to what they did at that time.

Q. You made no increase in the price of the sizes smaller than pea or buckwheat sizes, after the strike of 1912? A. No, sir.

7543 Q. How much per cent. did an increase of 25 cents a ton amount to in the price? A. Well, that would vary.

Q. Well, about how much, say, on stove coal? A. Well, in Chicago it would be a great deal less percentage than it would be in New York.

Mr. Warren: What would be?
The Witness: The percentage.
Mr. Warren: Percentage of what?
The Witness: Of the advance.
Mr. Machen: In the price.

7544 Q. Then in 1913, when the Pennsylvania State Tax went into effect there was a further increase was there not? A. In 1913 we started to charge the tax, yes, sir.

Q. You added the tax to the price of the coal? A. Yes.

Q. Now, for a time after the tax went into effect you added the tax as an additional item on each ton of coal billed out, didn't you? A. Yes, sir.

Q. Did you issue circulars as to that, or simply stamp a notice of the tax on each bill or quotation as it went out of the office, do you remember? A. I think we issued

circulars when we started it, and thereafter it was in- 7545
cluded in our regular advices of prices.

Q. You stamped it on each bill with a rubber stamp? A. I think it was printed on.

Q. Then how long did you keep up that practice? A. The practice of——

Q. Of adding the tax separately? A. Until the 1st of April, 1914.

Q. What did you do then? A. We included the tax in the price, did not add it separately.

Q. From that time on you simply quoted a flat price? 7546
A. Yes.

Q. Did you have any arrangement or understanding with the Lehigh Valley Coal Company as to the disposition of the extra sums which were added to the price or realized from the sale of coal in consequence of the tax? A. I don't understand that.

Q. What I mean to say is, there has been some question raised as to the constitutionality of the Pennsylvania State tax, is it not true? A. I think it is being contested.

Q. It is being contested? A. Yes. 7547

Q. Did you have any understanding with the Lehigh Valley Coal Company as to the disposition of the extra amount that you realized from the sale of coal by adding a sum to what had formerly been the price in order to cover this State tax?

Mr. Warren: I object to the question as incompetent.

The Witness: I don't believe I understand it. As I understand it, we had no understanding. 7548

Q. Well, I mean to say this, have you any understanding that if the State tax should be held unconstitutional you would not—— A. (Interrupting). I did not say that, at least, I did not so understand.

Q. Have you any understanding as to what is to be done in case such tax is declared unconstitutional? A. Not to my knowledge, no, sir.

Q. So far as you know, the Coal Sales Company intends to pocket the amount of the taxes?

7549 Mr. Warren: I object to the question, because the plain contract of March 1st, 1912, gives to the Coal Company 65 per cent of any increase in price, less all allowances as stated thereunder, and therefore it is clear the Lehigh Valley Coal Company gets 65 per cent. of that and the Sales Company cannot pocket the tax.

Mr. Machen: I will modify the question.

Q. Then the Coal Sales Company intends to pocket
7550 35 per cent. of the extra amount realized in consequence of the addition to selling price of coal, to cover the amount of this tax? A. I have no understanding to that effect, no, sir.

Q. You don't know anything about it? A. I don't know what we will do; I cannot cross a bridge before we get there.

Q. Well, the tax is paid by the operating company, isn't it? A. I don't know.

Q. Does the Coal Sales Company pay it? A. We don't pay it to the State.

7551 Q. Do you pay it to the coal company? A. We pay them for the coal, yes, sir.

Q. You pay them 65 per cent. of the average tide water prices, do you? A. I would not want to say just what our arrangement is for the purchase of coal; I don't know.

Mr. Warren: You have nothing to do with that?

The Witness: I have nothing to do with it, no, sir.

7552 Mr. Warren: I object to these questions. I did not ask him anything of this kind in direct examination, and he is not in charge of that branch of the company business anyway.

Q. You have nothing to do with the purchase of coal? A. No, sir.

Q. You are solely confined to the selling? A. Yes, sir.

Q. You are a member of the Board of Directors, aren't you? A. Yes, sir.

Q. And also Vice-President? A. Yes, sir, and Gen- 7553
eral Sales Agent.

Q. Now, as a member of the Board of Directors or Vice-President, can you state what payment, if any, is made by the Lehigh Valley Coal Sales Company to the Lehigh Valley Coal Company to reimburse the latter in whole or in part for the amount of the State tax paid by it to the State of Pennsylvania on coal mined?

Mr. Warren: I object to that as incompetent, irrelevant and immaterial.

The Witness: I cannot state offhand, no, sir. 7554

Q. There is some arrangement however? A. I think they are getting something, yes, sir.

Q. Is the arrangement in writing? A. I cannot say.

Q. You mean you don't know? A. I don't know.

Q. Who would know? A. The Secretary I think or the Auditor.

Q. In answer to one of Major Warren's questions, you stated that so far as the Lehigh Valley Coal Sales Company is concerned, New York is not the chief market 7555
for anthracite coal. It is, however, for all the country combined much the largest single market, isn't it? I mean to say there is more coal sold in New York than in any other single market, much more? A. Any other single city?

Q. Any other single market, I put it? A. I don't know what you mean by market.

Q. I will put it at city, then? A. I think that is so.

Q. You said you had the fixing of prices by the Lehigh Valley Coal Sales Company, subject to the supervision of the President, didn't you? A. Under the direction 7556
of the President.

Q. Under the direction of the President? A. Yes.

Q. Before the formation of the Coal Sales Company, how were the prices of the Lehigh Valley Coal Company fixed?

Mr. Warren: I object to the question as not cross-examination.

7557 Q. If you know? A. I don't know how they were fixed.

Q. You didn't have anything to do with fixing them? A. No, sir.

Q. Now, I call your attention to a paper which has been filed, marked Sales Company's Exhibit No. 42. Did you hear Mr. Stem's testimony in reference to this paper? A. Yes, sir.

Q. Can you tell me from whom and how you got the information which is purported to be stated in the two right hand columns in Sales Company's Exhibit No. 42
7558 headed respectively as follows, first: "Are rates in effect from collieries on roads other than L. V. R. R., and if so what railroads"; and second "Do L. V. R. R. tariffs name same rates from collieries not operated by L. V. Coal Company"? A. We got the information from our various sales agents in charge of the territories described in this exhibit.

Q. And you got the information from Allentown from Mr. Stem? A. From Mr. Stem, as to Allentown.

Q. And the information as to Athens, Auburn, Bound
7559 Brook, etc., was obtained from whom? A. From the agents who had charge of the sales at those points.

Q. Who are they? Go right down the line and tell us who they are? A. Athens, Mr. Stem; Auburn—

Q. (Interrupting) Mr. Stem, he didn't have anything to do with it except at Allentown?

Mr. Warren: I object to that question. I don't think that he said that. I think he said that that first sheet only had to do with Allentown. That is what I understood him to say.

7560 Mr. Machen: Then I certainly misunderstood Mr. Stem.

Q. Well, now, tell us where the information came from? A. Auburn from Mr. Hamilton; Bound Brook from Mr. Stem, Barton, I don't know where that is, I can't recall some of those small places.

Q. You don't know from whom you got the information? A. I cannot say offhand. I know that I applied to the sales agents in charge of sales at those points.

Q. I want the man who has absolute personal knowledge, and it does not help me any to know whether it is somebody unknown. Go on and tell us who the others are, upon whom you relied? A. Batavia, Mr. Hamilton; Buffalo, Mr. Hamilton. 7561

Mr. Warren: If Barton is in New York, you got it from Mr. Hamilton didn't you?

The Witness: Not necessarily. Cranford, Mr. Wolle; Cementon, Mr. Stem; Canastota, Mr. Schwarz; Cayuga, I can't say, off-hand. 7562

Q. Canastota, whom? A. Mr. Schwarz.

Q. What is his name? A. Mr. A. H. Schwarz. Cayuga, I cannot say off-hand. Cazenovia, I think Mr. Hamilton.

Q. You say you can't say off-hand. Can you get this information and give it to us in detail? A. Yes.

Q. That will be done?

Mr. Warren: Weren't the things which were utilized by you or under your direction in making this exhibit, weren't they letters or writings? 7563

The Witness: Most of them, I think, were in writing.

Mr. Warren: Have you got those letters?

The Witness: Yes, sir. We went over it by telephone and verbally, and completed it. It did not come to us in complete form.

Q. But you can ascertain from whom you derived this information? A. Yes, sir. 7564

Q. In every case? A. Yes, sir.

Q. And you can also produce the letters or written information, so far as you relied upon written information? A. Yes, sir.

Q. I will be obliged to you if you will do that? A. Yes, sir.

Q. Do you know how large a proportion of the coal of the Lehigh Valley Coal Sales Company is either sold at or passes through New York, meaning by New York

7565 not New York City, but New York harbor points, such as Perth Amboy?

Mr. Warren: You mean by that not only would be destined, we will say, to New England points, but would be transferred to boats at Perth Amboy?

Mr. Machen: Yes.

Mr. Warren: Well, you say passing through New York. You mean passing through the rivers that surround New York?

7566 Mr. Machen: Either sold at New York City for local delivery, or passing through the city limits, or passing through the harbor.

The Witness: I have no information as to that.

Q. You cannot even approximate it? A. No, sir.

Q. Whether it is one-half or one-fifth? A. We would not have any object in keeping records of that kind in that shape.

7567 Q. Well, you keep records of your sales at New York, because you have given them to us as the—— A. Sales——

Q. (Interrupting.) In New York City? A. Yes, sir.

Q. And don't you also have a record of the amount of your coal passing through Perth Amboy? A. Yes, sir.

Q. If you added those two together, wouldn't you get this figure? A. No, sir.

Q. Why not? A. Sales in New York, some of it, is included in the tonnage at Perth Amboy.

Q. You testified, if I recollect correctly, that you were
7568 unable to say how many of the producers named on page 35 of the Petition continued to sell their products to the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company, is that correct? A. I could not say offhand, no, sir.

Q. You know that some of them did and some of them did not? A. I cannot tell.

Q. Well, you said there was about a million tons of coal bought by the Lehigh Valley Coal Sales Company

or handled by the Lehigh Valley Coal Sales Company other than the coal of the Lehigh Valley Coal Company, or Coxe Brothers, or Markle, isn't that so? A. Yes, sir. 7569

Q. I suppose in that answer you meant to include only anthracite coal? A. Yes, sir.

Q. And if I recollect it correctly, you said that one million tons consisted of the coal of the Raub Coal Company, of Pardee & Company, of the Mount Lookout Colliery and the Forty-Fort Colliery? A. I think that is correct.

Q. Now, are those the only other persons, other than the Markles and the Lehigh Valley Coal Company, and Coxe Brothers, whose coals are handled by the Lehigh Valley Coal Sales Company—the only anthracite coals? A. I think so. 7570

Q. You said you had been informed that some of the coal taken over by the Lehigh Valley Coal Sales Company on March 1st, 1912, had been in storage for perhaps six or eight years, I think? A. Since the 1902 strike, shortly after the great strike.

Q. Now, isn't it a fact that in April and May, 1912, there was a coal strike and a shortage of coal, and practically all of the coal in storage was cleaned out? A. I have testified practically, but there might be some odds here and there. 7571

Q. I didn't understand you. You did say that, did you? A. Yes, sir.

Q. And that is a fact? A. Yes, sir.

Whereupon an adjournment was taken until July 30th, 1914, at 9:30 A. M.

7572

7573 UNITED STATES vs. LEHIGH VALLEY R. R. Co., *et al.*

New York, July 30th, 1914.

Hearing resumed pursuant to adjournment.

APPEARANCES AS BEFORE.

William R. Evans, recalled.

Re-Direct Examination by Mr. Warren:

7574 Q. Just a few questions. In answer to Government's counsel I understood you to say that the Wyoming Coal was a trade name for all of the coal that came from all the Wyoming region. Will you tell me what you meant by Wyoming coal as you used it in the Coal Sales Company? A. Used as a trade name with respect to the Lehigh Valley Coal Sales Company coal——

Q. Coming from—— A. From the vicinity of Wilkes-Barre.

Q. Which is in the Wyoming region? A. Yes.

7575 Q. You did not mean by that to cover all coal; that is, what is referred to in geology as the Wyoming region? A. I would not know as to that, no, sir.

Q. In other words, you meant to say that in trading on Wyoming coal you did not distinguish between the collieries from which you purchase coal in the region; that is what you meant? A. Yes, that is true.

Q. Can you tell by how many lake lines you ship anthracite at any time? A. I cannot tell the number; I know that we charter from various people.

7576 Q. It is safe to say then that you do not confine yourself to any particular company operating on the lakes? A. We do not.

Q. Now, I understood you to say that steam sizes were not used for domestic purposes very much; I want to ask you about that. It certainly is not true up in our country because we have what you call the Spencer Heater in which steam sizes exclusively are used for domestic purposes in lots of families. Are you not familiar with the furnaces which are sold in which there are provisions, certain kinds of grates for the utiliza-

tion of steam sizes exclusively for furnishing heat for 7577
the homes? A. I have seen such a furnace, one in the residence of one of my neighbors who uses buckwheat size.

Q. Then you do know as a fact that steam sizes are used, certainly you do not know to what extent, but certainly to some extent for domestic purposes? A. Yes, that is so.

Q. Take apartment houses, is there anything to prevent the installation of steam heat boilers or hot water furnaces or other devices to furnish heat that are provided for the use of steam sizes also to furnish heat, 7578
whether it is hot air, or that created by steam radiation? A. There is not. As a matter of fact it is my understanding that apartment houses use steam sizes very largely.

Q. Counsel for the Government seemed to lay emphasis upon the assessment by the State of Pennsylvania on anthracite coal in 1913, or what is commonly known as anthracite tonnage tax and asked you several questions about it? A. Yes.

Q. And about which the Sales Company has shown with reference to that so-called two and a half per cent. 7579
advalorem taxes; it is your understanding that that tax and the treatment of it by the Sales Company is of any benefit financially to the Lehigh Valley Coal Sales Company? A. It is not the intention to have it so. I understand it is not.

Q. Now, the details of that you have not yourself individually taken up to determine, have you? A. I have had conversations with the president and the other officers and I have refreshed my memory somewhat from yesterday.

Q. What is your understanding then about it? A. 7580
When the law was passed we received notice from the Lehigh Valley Coal Co. that it had been passed and they would expect us to pay them the amount of the tax, and we immediately notified the trade of the circumstances and while we did not agree to pay any of the tax as assessed for the reason that we had taken on various obligations at stated prices and we could not add it to such bills.

7581 Q. What do you mean taken on obligations; you mean contracts for the sale of coal which you had therefore, to carry out? A. Yes. However, we were willing to pay the tax to the extent that we were able to collect.

Q. You mean by being willing to pay it—— A. Pay it to the Coal Company. The tax, if we were able to collect it from our customers.

Q. I think you stated yesterday that you wrote to the agents and you did it upon the understanding that if the law was declared unconstitutional you would use
7582 your best efforts to return to such customers as paid you the money representing that tax—— A. Yes, I don't know that I said that yesterday, but that is so.

Q. Let me ask you if the purpose of the Lehigh Valley Coal Sales Company, so far as you understand it from the president and other officials, is not to use that tax as a money making device for the Sales Company in any way? A. It certainly is not.

Q. What would you say as to the prospects for the present fiscal year in the matter of any unusual or exceptional earnings by the Sales Company, speaking
7583 broadly now, such as you had in 1912, to illustrate?

Mr. Machen: Objected to as speculative.

A. In my opinion there no such prospects; I know of none as such at the present time.

Q. You have said to counsel for the Government that it was your impression, as he asked you for it, that in the City of New York there was a larger amount or total of anthracite coal sold than in any other city in the United States; do you remember saying that? A. I as-
7584 sented to his opinion that he thought that was so.

Q. You recall, do you not, take the calendar year of 1913, the total production of anthracite coal was somewhat over 70,000,000 tons, don't you, where you have got statistics, I mean? A. Yes.

Q. In your assent to the opinion, as you say it was of the counsel for the Government as to the fact of the sales of the larger quantity of anthracite in the City of New York than any other city, did you have in mind the total

annual production of anthracite, or didn't you? A. I 7585
gave it as my opinion without knowing the facts, the actual facts as to the tonnage consumed in New York City.

Q. Let me put it to you plain, if I can. You and he were discussing the question of the quantity of anthracite sold in the City of New York, weren't you? A. Yes.

Q. And into that city there has been carried by the railroads certain quantities out of a total production for the last calendar year of 75,000,000 tons in round num- 7586
bers, isn't it? A. Yes.

Q. Will you again state now in detail all the sources of information you had in the preparation of Sales Company's Exhibit No. 42; tell all you did? A. We first wrote to the various sales agents in charge of the sales at the points mentioned in the exhibit and asked for information. We also communicated with them by telephone and telegram and discussed it verbally. Part of the information was secured in our own office through the various employes who went to the Railroad Com- 7587
pany's offices and examined tariffs.

Q. Name the gentleman, if you can, who made the investigation by enquiry of the other railroad tariffs? A. Mr. R. S. White.

Q. Go on and tell anything you can recall which you utilized? A. I think that is all.

Q. Have you just handed the Government's counsel now a file of the correspondence; in other words, the data which you have by way of correspondence in connection with the compilation of that sheet? A. I have, yes, sir. 7588

Mr. Machen reserves the right to further cross-examine the witness.

7589 **Robert S. White**, called as a witness on behalf of the Lehigh Valley Coal Sales Company, being first sworn, testified as follows:

Direct Examination by Mr. Warren:

Q. What is your business? A. I am the shipper of the Lehigh Valley Coal Sales Company.

Q. In whose office is this department? A. Mr. Evans'.

Q. Did you have anything to do with the preparation of the Sales Company's Exhibit No. 42 now before you?

7590 A. I examined and verified the rates to these various points.

Q. Then you had specially to do with the last two columns, did you not? A. Yes, sir.

Q. What did you have to do with those columns; just tell us? A. I took the rates from the Lehigh Valley Railroad Company's tariffs and compared them with the rates of the other roads to the same points.

Q. The other roads that are named on that tabulation? A. Yes.

Q. And do those last two columns correctly state the

7591 facts then with reference to the Lehigh Valley tariffs to the points named and the other roads named in the tabulation to the points named? A. Yes.

Cross-Examination by Mr. Machen:

Q. Mr. White, did you examine the tariffs of each road mentioned in the next to the extreme right hand column in the Sales Company's Exhibit No. 42? A. Yes, sir.

Q. Where did you examine them? A. I went where I found a complete file of all the tariffs.

7592 Q. Where is that? A. In the office of the general coal and freight agent of the Lehigh Valley Railroad.

Q. Mr. Grier? A. Yes. They were common property there for examination.

Mr. Warren: They are published tariffs.

The Witness: They are published tariffs filed in public places.

Q. And these are the tariffs over the roads to which the Lehigh Valley Railroad is not a party? A. Yes.

Q. How do you know that these tariffs are now in 7593
force? Those tariffs which you examined of the other railroads? A. As the files were completed and there were no other tariffs on file changing, modifying or withdrawing these rates.

Q. On Mr. Grier's file? A. Yes.

Q. You inferred from that that they were the latest published rates? A. Yes; tariffs are interchanged between the different roads.

Q. Take for example the point of Auburn, New York? A. Yes. 7594

Q. Auburn is reached by five railroads, is it, besides the Lehigh Valley? A. Five railroads, yes.

Q. The Philadelphia & Reading, the Erie, the Delaware, Lackawanna & Western, the Pennsylvania Railroad and the Ontario & Western, is that correct? A. Yes.

Q. The Ontario & Western is the New York, Ontario & Western, isn't it? A. Yes.

Q. Then I understand that you intend to convey by Sales Company's Exhibit No. 42, information that each of these five railroads mentioned, the Philadelphia & 7595
Reading, the Erie Railroad, the Delaware, Lackawanna & Western and the Pennsylvania Railroad and the New York, Ontario & Western Railroad have tariffs in effect from collieries on their lines respectively to the city or town of Auburn, New York, which are the same in amount as the tariffs of the Lehigh Valley Railroad from collieries on the Lehigh Valley Railroad in the anthracite districts to the same point, that is, to Auburn, New York? A. Yes.

Q. The yard or premises of Cuddy & Geherin at Au- 7596
burn are situated on the line of the Lehigh Valley Railroad Company, are they not? A. I am not positive about that.

Q. You don't know where they are situated? A. No, I do not.

Q. You don't know which railroads, if any, of the five you have mentioned in addition to the Lehigh Valley Railroad actually reach these premises? A. No, sir.

7597 Q. And all that you know is, and all that Exhibit No. 42 is intended to state is, that each of those railroads have tariffs in effect to the City of Auburn? A. Yes.

Q. And that those tariffs of collieries on those roads respectively are the same as the Lehigh Valley tariffs from collieries on the Lehigh Valley? A. Yes.

Q. Would your answer be the same with respect to each of the other cities or points mentioned on Exhibit No. 42? A. Yes.

Q. All that you mean in any case to state by the next
7598 to the right-hand column in Sales Company's Exhibit No. 42, is that the railroads mentioned in that column respectively have in effect, so far as your information goes, tariffs from collieries on their respective lines in the anthracite district to their freight stations in the towns mentioned in the next to the left-hand column in said exhibit, which tariffs are the same as the tariffs in effect upon the Lehigh Valley Railroad from collieries in anthracite regions on its lines to its freight station or other points of delivery in those towns? A. Will you please repeat that question.

7599 Q. (Question read.) A. Yes.

Q. And you don't know in any case whether the premises of the various persons mentioned in the extreme left-hand column are accessible to any of those railroads other than the Lehigh Valley Railroad? A. No.

Q. And you did not intend to indicate by this exhibit anything about that? A. About what?

Q. About the accessibility of the premises occupied by these various lessees to or from the railroads other than the Lehigh Valley Railroad mentioned in the next
7600 to the right-hand column? A. I had not such intention. I merely verified the rates, that is all I had to do with the exhibit. It was outside of my province to do anything else.

Q. And does the extreme right-hand column mean merely that the Lehigh Valley Railroad tariffs from all collieries on its lines to the various cities and towns respectively are the same as the rates from the collieries of the Lehigh Valley Coal Company on its lines to those towns? A. Yes.

Q. In other words, all that column is intended to indi- 7601
cate is that the Lehigh Valley Railroad Company in its tariffs has not discriminated in favor of the collieries of the Lehigh Valley Coal Company as against the other collieries located in similar districts along its line? A. It has not.

Q. That is all that right-hand column is intended to indicate? A. Yes.

Re-Direct Examination by Mr. Warren:

Q. In other words, there is nothing on that table which 7602
indicates the accessibility or otherwise of the premises referred to in the table to other railroads than the Lehigh Valley? A. Exactly.

Q. You examined these published tariffs; they are in printed circular form, are they not? A. Yes.

Q. In the office of Mr. Grier? A. Yes.

Q. That being a convenient place for you to go to examine the railroad tariffs of other railroads? A. Yes, sir.

Q. Will you tell us whether they were apparently the 7603
tariffs in effect at the present time? A. Yes, sir.

Q. Aren't these published tariffs of the railroad dated; do they not bear date on their face effective such a time? A. Exactly.

George N. Wilson, a witness called on behalf of the Lehigh Valley Coal Sales Company, being first sworn, testified as follows:

7604

Direct Examination by Mr. Warren:

Q. Mr. Wilson, where do you reside? A. I live in Orange, New Jersey.

Q. How long has your residence been there? A. About two years or a little over.

Q. Are you now the president of the Lehigh Valley Coal Sales Company? A. Yes.

Q. You became president at what time? A. September, 1912.

7605 Q. Upon the death of Mr. Skeele? A. Yes.

Q. The former president? A. Yes.

Q. You were elected his successor then as president of the company? A. Yes.

Q. Prior to that time what relation had you with the Sales Company? A. I was vice-president and secretary.

Q. From what time to what time? A. From its formation, the first of March, 1912, to my election as president.

Q. Prior to your going with the Lehigh Valley Coal
7606 Sales Company what was your business and occupation? A. General auditor of the Lehigh Valley Railroad Company.

Q. For what length of time? A. Since 1903.

Q. To March 1st, 1912? A. Yes.

Q. While you were general auditor of the Lehigh Valley Railroad Company were you at any time auditor of the Lehigh Valley Coal Company? A. I was.

Q. For what length of time? A. From 1903 to 1909.

Q. Who succeeded you as general auditor of the Le-
7607 high Valley Coal Company? A. L. A. Tompkins is general auditor of the Lehigh Valley Coal Company now.

Q. Did he succeed you as general auditor? A. Yes. I don't remember whether he was appointed immediately or not, but soon after.

Q. Prior to your going with the Lehigh Valley Railroad Company as its general auditor in 1903, what was your occupation? A. I was assistant general auditor of the Chicago, Milwaukee & St. Paul Railroad.

Q. With headquarters where? A. In Chicago.

7608 Q. For what length of time? A. For five years.

Q. Under the general auditor of that company? A. Yes.

Q. That company's lines at that time extended where? A. Extended from Chicago westward to the Missouri River west and northwest, north to the Great Lakes.

Q. Having a total mileage of about what? A. They had about 7,000 miles then.

Q. Where did you get your collegiate education or academic training? A. In the University of Georgia.

Q. Where is that? A. Located in Athens, Georgia. 7609

Q. You took what degree? A. Bachelor of Engineering.

Q. After that did you have any experience in railroading prior to going with the Chicago, Milwaukee & St. Paul as its assistant general auditor? A. I was associated with the Kansas City, Memphis and Birmingham Railroad while under construction about two years and with its operations for a year or two afterwards, and then the Kansas City, Fort Scott & Memphis Railroad; then with the Kansas City, Pittsburgh & Gulf 7610
Railroad; then, as stated, with the Chicago, Milwaukee & St. Paul.

Q. In the late fall of 1911 and through the winter of 1912 you were the general auditor then of the Lehigh Valley Railroad Company? A. Yes.

Q. Your headquarters were where during that service and at that time? A. Philadelphia.

Q. Will you tell us about when your attention was first called to the proposed formation of the Lehigh Valley Coal Sales Company and in what way? A. I think about the early part of December if I recollect. 7611

Mr. Machen: December, 1911?
The Witness: 1911.

Q. At that time Mr. John W. Skeele you knew quite well, did you not? A. Yes.

Q. And had known him for how many years? A. Since 1903.

Q. And what had been his occupation and employment during the years you had known him since 1903? A. He had been general sales agent of the Lehigh Valley 7612
Coal Company, and then vice-president and general sales manager of the Lehigh Valley Coal Company.

Q. And in charge of what branch of its business? A. Sales of coal, anthracite coal.

Q. And during the years that you were the general auditor of the Lehigh Valley Coal Company, which I understood you to say was from 1903 to 1909, or about that period of time, did you become familiar with what

7613 I may designate as the selling end of that business, or the merchandising of anthracite coal by that company? A. I had a great deal to do with its sales accounts.

Q. So that you had a general knowledge of their method of merchandising anthracite coal? A. Yes.

Q. And handling coal which they sold on commission? A. Yes.

Q. In December, 1911, then when you were asked to take up the matters incident to the formation of the Sales Company and the separation of the business of the coal
7614 company as between production and merchandising of anthracite, were you generally, speaking broadly now, informed as to the character of their business, the distribution of their sales agencies, the localities in which they were selling anthracite and the method of conducting that business under the direction of Mr. Skeele? A. Yes.

Q. And had some knowledge I take it of the gross business they did, whether in handling their own product or selling the product of other concerns on commission? A. Yes.

7615 Q. What would you say from your personal knowledge and observation of Mr. John W. Skeele as to his experience, first, and second, as to his capacity of taking charge of a company whose business was intended to be the merchandising of anthracite, handling of very large gross tonnage, and in various states of the country and in Canada as well? A. He was a man of long experience and I considered him of great ability in that line.

Q. What would you say as to the general standing of his reputation as a man of probity and integrity? A. As
7616 stated, very high.

Q. Who interested you in the project of the organization of the Lehigh Valley Coal Sales Company and in the making of a contract by and between the Lehigh Valley Coal Company and the Lehigh Valley Coal Sales Company for the sale of all its coal at the mines in Pennsylvania? A. Mr. Skeele.

Q. Was it at his request that you—at whose request did you arrange to retire from the Lehigh Valley Railroad service as its general auditor and go with the Sales

Company? A. Why, Mr. Skeele told Mr. Smith, who was 7617
my superior officer, that he would like me to take that position in charge of the finances and accounts of the new company if it was formed as was then contemplated.

Q. And if you know, who suggested, who asked the gentlemen who became the incorporators of the Lehigh Valley Coal Sales Company—I believe you were one—who suggested them? A. Mr. Skeele, as far as my knowledge goes.

Q. Speaking of Mr. Smith, you say he was your superior at that time; he was vice-president of the Lehigh 7618
Valley Railroad Company, wasn't he? A. He was.

Q. And especially in charge of the finances and accounting end of that company? A. Yes.

Q. And nothing else? A. Finance, accounts and secretarial department.

Q. Did you participate, after Mr. Skeele asked you to go with him with the Sales Company, did you participate in a series of conferences as between Mr. Skeele and yourself and representatives of the Lehigh Valley Coal Company preliminary to the making of the contract 7619
of March 1st, 1912, and in which the various phases of the matter were discussed? A. I did.

Q. You and Mr. Skeele as representing what? A. Lehigh Valley Coal Sales Company to be.

Q. This—its charter was taken out, if I have the date correct, the 22nd of January, 1912? A. Yes.

Q. It was about that date at any rate that you and Mr. Skeele and two other gentlemen whose names have gone from me at this moment were the incorporators, do you remember that? A. Yes.

Q. Having taken out the charter following that were 7620
these conferences then looking towards the arrangement to be made by the Lehigh Valley Coal Company in connection with its retirement from the merchandising of coal and its desire to confine itself as to all its business in the State of Pennsylvania? A. Yes, there were a number of conferences.

Q. You and Mr. Skeele were representing the Sales Company, then formed? A. Yes.

7621 Q. Of which you were one of the incorporators? A. Yes.

Q. At that time who was the vice-president and general manager of the Lehigh Valley Coal Company? A. Mr. S. D. Warriner.

Q. He is now the president, is he not, of the Lehigh Coal & Navigation Company? A. So I understand.

Q. And Mr. Chase I believe was his successor as vice-president and general manager of the Coal Company, is he not? A. Yes.

7622 Q. Was Judge Wheaton as counsel for the Lehigh Valley Coal Company present at some of those conferences? A. He was.

Q. They covered what period of time? A. Most of January and February.

Q. If you know, what was the purpose of the Lehigh Valley Coal Company as expressed at those conferences and what was the purpose of the Lehigh Valley Coal Sales Company, its charter having then been taken out, as expressed at those conferences; in other words, what were the parties negotiating for? Will you tell us now

7623 briefly the purpose which the negotiations were for? A. The object of the coal company was to sell us coal at the mines in Pennsylvania so that it would have nothing whatever to do with the coal thereafter. The object of the Sales Company primarily was to purchase coal at that point, that is, as it was loaded in cars and ready for market, and to become then and there the sole owner of the coal.

Q. Was it with that purpose that these negotiations were held? A. Yes.

7624 Q. What would you say as to the bona fides of the discussions and of the conferences and of the purposes as between the representatives of the two companies?

Mr. Machen: Objected to as a matter of opinion.

Mr. Warren: To which I reply that this is an answer to the Government's charge that these dealings were not bona fide dealings, but otherwise for some reason or another.

Q. Answer the question, please? A. Absolutely bona 7625
fide.

Q. Did you ascertain at that time that the Lehigh Valley Coal Company was a party to a contract with G. B. Markle & Company, afterwards becoming incorporated as the G. B. Markle Company, by the terms of which they were selling the coal produced by that company on a commission basis? A. I was aware of such a contract.

Q. Did you learn further that the Lehigh Valley Coal Company was the vendee in a few coal purchase contracts and commonly known as the sixty-five per cent. 7626
contracts? A. Yes.

Q. Among them one with Coxe Brothers & Company, Inc.? A. Yes.

Q. Another with the Raub Coal Company? A. Yes.

Q. Another with the Mt. Lookout Coal Company? A. Yes.

Q. Another with the Forty Fort Coal Company? A. Yes.

Q. Another with A. Pardee & Company? A. Yes.

Q. Are there any others now which you can recall 7627
aside from those I have mentioned? A. No.

Q. Was discussion had as to the disposition of those contracts in view of what you say was the stated object of the Lehigh Valley Coal Company as to its disposition of all of its business and handling all of its business at its mines in Pennsylvania? A. Yes.

Q. And what was necessary, if you know, for the Lehigh Valley Coal Company to do aside from selling its coal, its own production at the mines, if it desired to there end all of its business transactions with the sixty-
five per cent. contracts which it then was a party to, 7628
and with the Markle corporation which it was a party to? A. It was necessary for it to sell that coal the same as it sold its own coal, the coal which it produced from its own mines, namely, at the mines.

Q. And how about the Markle corporation contract; was it not necessary for it to arrange with the Sales Company to carry out that contract? A. Yes.

Q. Otherwise it would necessarily be interested as a commission merchant—I presume that would be the cor-

7629 rect expression—the handling of that product which was being handled in several States, was it not? A. Yes; it would still be merchandising coal which it was trying to discontinue.

Q. Now, as to some other features of the situation and the problem you were considering at that time. Did you ascertain whether there were not certain leases which the Lehigh Valley Coal Company held for certain storage plants and other facilities which was a necessary part of the merchandising of anthracite? A. Yes; the
7630 coal company owned some and leased some.

Q. That is, it owned some which it leased to other people and it leased some from other people which it used itself, is that right? A. For the storage of its coal I understand you refer to. It was using certain facilities some of which it owned and some of which it leased from other owners.

Q. And was it not also the lessor of certain properties—I don't know how consequential they were—which it leased out to certain of its customers? A. Oh, yes, some small plants.

7631 Q. At different places around the country? A. Yes.

Q. And did you ascertain during these conferences as to whether it did not have certain contracts for the sale of coal with various persons which continued through the year 1912? A. Yes.

Q. And did it not have certain sales agency properties or, at least, rented premises where it had its headquarters in very large centers of population in the country? A. Yes.

Q. In other words, it had a complete selling outfit?
7632 A. Exactly.

Q. It had sales agencies in various States? A. Yes.

Q. Rooms which were rented as the homes of those sales agencies—as their offices? A. Yes.

Q. Did you also ascertain that it had a large number of accounts receivable, that is to say, book accounts of moneys owing to it from persons to whom it had sold coal? A. Yes.

Q. Did you further ascertain that it had a certain quantity of coal in storage, that is, stock coal? A. Yes.

Q. Now, as of what date was it decided to take over 7633
all the various matters in which the Coal Company had an interest as well as the sale of its production at the mines? A. March 1st, 1912.

Q. Now, that was determined as a date at about what time during your negotiations; that is to say, about what date in your negotiations was it determined to try to accomplish all these things on this given date? A. Well, as I recall it, the preparation of the charter and obtaining that depended or governed somewhat, and that being in January it was concluded that about the first of March 7634
was as early as that could be accomplished.

Q. And was it determined to arrange to have the Sales Company take over everything of every kind and nature in which the Coal Company was participating outside of Pennsylvania as of March 1st? A. To take over everything pertaining to what was then called the sales department.

Q. Which was all of its interstate business, wasn't it? A. The whole thing as a going concern, marketing the production of the Lehigh Valley Coal Company and the 7635
coal which it acquired under the sixty-five per cent. contracts which have been referred to.

Q. State in your own way what did that involve in the way of a transfer to the Coal Sales Company? A. It involved first the formation of the company, then the organization or taking over of the existing organization; all its agents throughout the country; all its employes, solicitors and so forth; accounting force, treasury, and the whole organization of a large company; the taking over of all the accounts receivable, several thousand ac- 7636
counts.

Q. Running into millions of dollars, didn't they A. Yes.

Q. In the aggregate, I mean? A. Yes. The taking over of the large stocks of coal which had been accumulated in various parts of the country; various yards and stocking plants of the Lehigh Valley Coal Company.

Q. Transfer of leases? A. The transfer of leases.

Q. Contracts for sales of coal? A. Well, contracts pertaining to the sale of coal; in fact, the whole ma-

7637 chinery of a large business aggregating nearly $40,000,000 a year.

Q. From your knowledge of the affairs of the Coal Company would you say it would be practicable for it to have—assuming now it was thought desirable that it be done as of a given date—to have transferred its entire business the details of which you have given us on any single day by distribution among a variety of possible bidders or by negotiations among a variety of possible customers? A. It does not seem possible to me.

7638 Q. You were familiar with the fact, were you not, that early in January of that year the Lehigh Valley Railroad Company had issued a circular to its stockholders declaring a dividend out of its surplus of ten per cent. upon its capital stock payable as I recall it sometime in February, and that that circular had gone out early in January? A. Yes; that coincides with my recollection.

Q. With a privilege accorded to the stockholders of the Railroad Company to subscribe for the stock of the
7639 Lehigh Valley Coal Sales Company to be organized, and if they did not subscribe a statement in the circular that Drexel & Company, bankers in Philadelphia, had undertaken to take up and subscribe for such stock as the stockholders of the Lehigh Valley Railroad Company did not desire to take in the proposed corporation; you recall that circular? A. Yes.

Q. And you were familiar with it prior to these negotiations following the issuance of that circular, when meeting the representatives of the Coal Company with whom you were dealing with reference to the proposed
7640 contracts or leases afterwards made as of March 1st? A. Yes.

Q. What estimates, if any, were made as to the probable amount of capital that would be required on the part of any single concern that undertook to take over the stored coal, the book accounts, the leases and so forth of the Lehigh Valley Coal Company? A. Well, various estimates were made. It was discussed one way and another at which there were various opinions based on the recent history of the amount that the Lehigh Val-

ley Coal Company had invested in coal and accounts, 7641
and it was finally concluded that about $6,000,000 would
see the company through most of the time; at other
times perhaps they would have to supplement that by
borrowing money.

Q. Or increasing its capital? A. Yes.

Q. And is that why its authorized capital was fixed
at $10,000,000 in its charter? A. Yes.

Q. Now, will you tell us somewhat in detail the nego-
tiations as to the purchase of the stored coal and how
you came to arrive at the figures which appear in Gov- 7642
ernment Exhibit No. 3 printed in the petition, at page
90? A. Well, at the time these negotiations began and
during the progress of them the coal company had quite
a lot of coal in stock, an unusually large amount as I
recall, nearly a million tons. It was stored all the way
from Perth Amboy to Superior, Wisconsin, in storage
plants and yards. It was desired when the company
began business March 1st that it would have acquired
all the stock of coal as of that date so that there would
be no adjustment or backing and filling between the coal 7643
company and the sales company after the sales company
started in business. Of course, there are a great many
elements of uncertainty about a stock of coal as to
how much it will realize in tonnage because of degrada-
tion and shortage; also we had to have in mind there
the fact that on the first of April ordinarily the price
of coal falls fifty cents a ton, so that we endeavored
to arrange a price or prices by which we could purchase
and pay for the coal which would be on hand as of a
given future date, March 1st, 1912, at about its book value
as it stood or would stand on the books of the Lehigh 7644
Valley Coal Company.

Q. What would you say as to the fairness of that
method of determining the price as between the two
companies? A. Well, I should say it was quite fair, and
if the coal company realized close to its book value it
was particularly fair to the Coal Company.

Q. I see. Go on now. A. Well, with all these matters to
consider and endeavor to forecast matters as they would

7645 stand at March 1st we finally arrived or decided or agreed upon these figures referred to in this exhibit.

Q. And as stated there you and Mr. Skeele, as the representatives of the Sales Company and the representatives of the Coal Company agreed that you would buy and they would sell whatever coal was in storage at mid-night February 29, 1912, at whatever storage plants they had such coal stored and wherever situated, paying therefor as to prepared sizes at points west and north of Buffalo the figures stated on page 90, Government's
7646 petition, $5.75 a gross ton at Buffalo and at points east the sum of $4.00 per gross ton, and for sizes smaller stored at all points not including that stored at or about the mines, the sum of $1.25 per gross ton? A. That is correct.

Q. Now, what would you say as to those figures as being equitable and fair between the vendor and vendee in those negotiations; that is to say, as between the Coal Company and the Sales Company; what is your judgment as a man of experience and knowledge of sales of coal and also as a man who had as of the date of these
7647 negotiations to ally himself exclusively with a new concern about to be launched in business? A. I should say they were fair and equitable.

Q. To both parties? A. Yes, to both parties as well as could be ascertained.

Q. If anything fairer to the Coal Company than to the Sales Company is your individual judgment? A. Yes.

Q. Your purpose and intention was to treat this problem in all its phases equitably and fairly, wasn't it? A. Absolutely.

7648 Q. The Government has asserted in its petition and apparently has laid some emphasis in taking testimony too, about what they say is the fact, that as to these small sizes the price stated in your dealings with the Coal Company, namely, $1.25 per gross ton, was less than the freight rate to the various railroad points at which these small sizes were then stored. First of all, will you tell us—you were buying an entire tonnage in the aggregate of all sizes, were you not? A. All coal that they had of whatever size.

Q. Taking what chances as far as you were concerned 7649
in the matter of degradation and losses in rehandling and all that sort of thing? A. All the chances.

Q. What would you say as to a criticism of the Government in its petition, and if I understand it, in some of its examinations of this fact of the purchase of these small sizes at $1.25 per gross ton? A. I should say it has no bearing whatever.

Q. Tell us please your reasons for that? A. Coal, the small sizes referred to here, sizes smaller than prepared sizes, stored at all points, at all the western points is 7650
made through degradation, not shipped there as such from the mines. It goes there with a freight rate of course, applicable to the prepared size; in the handling of the coal this small coal is made, screened out and it has to be reprepared, reprepared to the extent of screening.

Q. At the storage plants? A. At the storage plants or the yards as it goes into cars or wagons, so that the coal will be clean and up to standard when it goes to the customer. This refuse or smaller coal made there, we 7651
must take what we can get for it, which is usually, nearly always, less than the freight.

Q. In other words, it is a common experience in the merchandising of the coal then, when you are handling that which is at one time being deposited in a storage yard and there rehandling it and this small size whatever it amounts to is made as a part of the degradation and loss in the storage plants, you are forced to sell it at what you can get for it and it might at least be less than what would be the freight rate upon steam size if there were any steam size freighted to that point from 7652
a mine? A. Certainly.

Q. Of which there are none. That is, you do not ship steam sizes to these western points as such, I mean? A. No.

Q. Now, let us take the plants on the eastern points and follow the Government's criticism as to that? A. The same thing applies.

Q. May I ask you if you can recall about what proportion of the aggregate of the stock coal you purchased

7653 from the Coal Company was loaded at storage plants that you would include in western points—I don't know whether you remember that or not, but can you give me any idea what proportion of the aggregate amount that you purchased from the Coal Company would be at the western railroad ponts as compared with those—— A. No, I cannot give you that from memory; it was considerable.

Q. I ask you to examine, if you will, please, Government Exhibit No. 110, which is headed "Lehigh Valley
7654 Coal Company in stock, west, February 29, 1912," and then compare it after you have examined it with the next sheet of the same exhibit which represents the coal in stock at Buffalo and east so as to tell me approximately what part of the total aggregate tonnage that you purchased from the coal company of stored coal was western as compared with that which was at Buffalo? A. The total weight of all sizes 67,872 tons.

Q. Was there any ascertainment at the time when the coal at the storage points of Buffalo and points east in steam sizes went into those storage plants? A. No.

7655 Q. Is there any way of determining the length of time as to which all of the coal that is there, we will say in steam sizes, has been there at the time the Coal Company took it out I mean, without very careful examination of the records of the time of the depositing there of every pound of coal in those sizes that has been deposited there? A. No.

Q. May it not be there for several weeks or months or running into years? A. Yes.

Q. You have separate places in your storage plants
7656 for the various sizes, do you not? A. Yes.

Q. Supposing you deposit to-day a certain quantity, we will say of steam sizes, and three months—I will say three months—after to-day you deposit some more: that goes on top of the steam size that you deposited to-day in case no sale has occurred in the intervening time? A. Yes.

Q. Now, in case of your selling some quantity of steam coal out of that storage plant, is there—is it not your experience that at times some quantity is taken out

which would be the top quantity deposited before you reach the lower quantity deposited at the base of that pyramid or pile of steam sizes? A. Certainly. 7657

Q. Would it have been practicable then, assuming now that there is—would it have been practicable to have ascertained the exact date and the price in effect as of that date when every pound of steam size was deposited, having come to the storage plant as I said now, not made there by degradation, any aggregate quantity of the steam sizes you were purchasing from the Coal Company? A. No.

Q. Did your company take over on the first of March on the prices theretofore agreed upon and incorporated in the contract of March first, all the coal of the Lehigh Valley Coal Company wherever situated in storage plants? A. Yes. 7658

Q. And taken title thereto? A. Yes.

Q. Now, how did you pay for that; I mean to say within what length of time did you pay for that? A. Paid for it on March 1st, 1912.

Q. Now do you know the extent, if any, that the amount which you paid upon these agreed prices differed from the book value of the Coal Company as represented to you for that coal; that is, when it came to work out I mean after your estimates and after your ascertainment of the tonnage which you paid for? A. It worked out very closely to the net book value of the Coal Company. 7659

Q. Mr. Tompkins has testified if I remember, that it worked out to less than one-half of one per cent. in difference as between what they carried these tonnages of stock coal on their books with the figures which you paid therefor? A. That is my understanding. 7660

Q. What would you say as to the charge that the prices you paid for this stored coal were unreasonably low? A. I would say they were not unreasonably low.

Q. By-the-bye, were you ever a director of the Railroad Company as asserted in the petition? A. No.

Q. Now, let us take up the negotiations under which you were to pay for the book accounts of the Lehigh Valley Coal Company as of March 1st; will you tell us

7661 what that was? A. We were to take them over guaranteed by the Coal Company.

Q. You mean by that what, when you say guaranteed by the Coal Company? A. I mean that all book accounts for coal sales were transferred and purchased and paid for by the Sales Company.

Q. Just as they appeared on the books of the Coal Company? A. Just as they appeared, and the Coal Company guaranteed the collection of those amounts as they stood on their books.

7662 Q. That is, the company guaranteed you against any loss, you having paid spot cash for the entire list of book accounts? A. That is it.

Q. In case of your failure to recover the spot cash that you paid them they are to recoup you such losses? A. Exactly.

Q. The Lehigh Valley Coal Company, of course, was in business in February, 1912, throughout the month? A. Yes.

Q. They, therefore, had a certain amount of coal in transit? A. Yes.

7663 Q. That belonged to it? A. Yes.

Q. Was there any arrangement made as to your taking over such of that coal as was in transit after mid-night February 29th? A. The Sales Company was to and did take over all the coal of such a character.

Q. At what agreed price between the Coal Company and the Sales Company? A. At the prices for February. Let me state that a little differently, on the basis of the contract (Exhibit No. 3), applied to the f. o. b. averages for February.

7664 Q. And did you do that? A. We did.

Q. What would you say as to the reasonableness and fairness of that price as between both parties to the contract? A. It was absolutely fair and reasonable.

Q. Now, your company made a contract of March 1st, Exhibit No. 3? A. Yes.

Q. And has been carrying it out ever since, has it not, for that matter? A. Yes.

Q. What was the purpose as appears on its face of the making of the contract on your part? A. The purpose was to purchase the coal at the mines.

Q. Taking title to it where? A. Taking title to it there 7665
at the mines when it was loaded in the cars ready to go forward.

Q. Taking deliveries where? A. At the mines.

Q. And then inasmuch as you have already spoken of there being in existence certain coal purchase contracts, what was the arrangement as to the Lehigh Valley Sales Company with reference to it? A. That the Coal Sales Company would purchase that coal under the same terms that the Coal Company had contracted to purchase it.

Q. Taking deliveries where? A. Taking deliveries at 7666
the mines.

Q. In other words, carrying out the contracts for the Coal Company and in a sense stepping into its shoes; wasn't that the effect of it as to those purchase contracts? A. Exactly.

Q. Now, as to coal you purchased from the Lehigh Valley Coal Company and the fixing of the prices for that coal, was that a matter of bargaining and discussion pro and con and back and forth? A. Yes.

Q. And the figures as they appear in the contract were 7667
finally agreed upon, were they? A. They were.

Q. Will you please state briefly the reason for the allowance so-called of a per cent. lessening each year for a few years there from the sixty-five per cent. price? A. Well, we were to take over the business as a going concern with respect to the sales and merchandising of all coal and all its facilities, storage plants and yards and so forth, the good with the bad, so to speak; that is, the lean with the fat. We were not to pick out one market or one yard and say this is good and another and say that is bad and we won't take it. 7668

Q. You had to take it all? A. We had to take it all, and we had a great deal of figuring and consideration and discussion back and forth as you said, and the coal company had in mind to bind us to use all our best efforts to extend the market and to increase the business and enable them, therefore, to handle as much as was practical or possible, so that we felt that it was only fair that we should have prices which would result from such basis as was finally agreed upon.

Q. Temporarily? A. Temporarily. The sliding scale being finally adopted as the means of lessening that
7669 gradually, lessening the so-called allowances. And we were given some time in which to extend our efforts to other markets and to increase existing markets.

Q. Was this the expectation, that the contract would be a matter of some duration A. It was.

Q. In view of the forecast as it really was was it not of the future, that is right, isn't it? A. Yes.

Q. Was that the occasion of the insertion of cancella-
7670 tion to protect both parties? A. Yes.

Q. What would you say as to the bona fides of that contract as between two separate corporations?

Mr. Machen: Objected to as a matter of opinion.

A. I should say it was above reproach.

Q. In other words, it was entered into certainly in good faith between you gentlemen who were attempting to provide for a solution of a problem of the divorce by the Coal Company from all merchandising of coal and
7671 all doing of business of every kind, limiting the business to the mines in Pennsylvania? A. In absolutely good faith.

Q. So then the contract as well as all these other matters was a matter of bargaining and of final concurrence of the minds of the parties interested therein? A. That is correct.

Q. From March 1st, 1912, have you had any relation or employment or interest in any way, shape, form or manner to or with the Lehigh Valley Coal Company, Coxe Brothers & Company, Inc., or the Lehigh Valley
7672 Railroad Company? A. I have not.

Q. To what have you devoted your time? A. To the Lehigh Valley Coal Sales Company.

Q. And to what with reference to that company? A. From March 1st to the latter part of September, 1912, its finances and accounts; after that time up to the present time more particularly with reference to general administration.

Q. When the gentlemen representing the sales company and those who represented the coal company were

negotiating for various transfers of book accounts and 7673
leases and the making of the contracts and lease with the Coal Company, had you any knowledge or even intimation of any cessation in the work or strike on the part of the miners which actually did occur in the later spring of that year? A. None whatever.

Q. Had you any reason to anticipate any increase in the price of coal which was, as I understand it, associated with the resumption of work following that cessation in work? A. I had not.

Q. There was associated with these transfers and the 7674
making of these contracts the taking over by the Sales Company the sales agency of the Markle Company, was there not? A. Yes.

Q. In other words, the Coal Company asked you to carry out that contract? A. Yes.

Q. So as to relieve it of it in its entirety? A. Yes.

Q. Have you done that? A. Yes.

Q. And to the best of your ability conformed with its terms? A. Yes.

Q. Continuously up to the present time? A. Yes.

Q. The Coxe Brothers' contract, that is to say, the 7675
existing coal purchase contract, commonly called the sixty-five per cent. contract in force between the Coal Company and Coxe Brothers as of March 1st, 1912, you carried out to what date? A. June 1st, 1913.

Q. At which time a new arrangement was made by you with Coxe Brothers & Company, Inc., was there not? A. Yes.

Q. The Government has offered in evidence the correspondence which I furnished them between you and the representatives of Coxe Brothers & Company, Inc., 7676
by which it appears that that is a temporary arrangement from month to month, isn't that right? A. Yes.

Q. And you paid Coxe Brothers & Company for such coal as you have purchased since June 1st, 1913, on the prices which you ascertained from what I now think is called the Armstrong Bureau, that is to say, sixty-five per cent. of the general average prices of all coal that comes to tide the previous month, isn't that right? A. Yes.

7677 Q. Let us take up the other contracts, Mt. Lookout Coal Company contract was cancelled May 31, 1913, was it not? A. Yes.

Q. Did you not have notice from the officials of that company that it was cancelled by reason of the decree of the Government, May 26th, 1913? A. Yes.

Q. With whom did you make the deal for the purchase of the Mt. Lookout coal after June 1st, 1913? A. A. F. Law.

Q. He at that time was president of the Mt. Lookout Coal Company, was he not? A. He was.

7678 Q. You made a verbal arrangement with him? A. Yes.

Q. And from that time to the present it was what verbal arrangement, sixty-five per cent? A. It is on the sixty-five per cent. basis, first deducting twenty-five cents, applying the sixty-five per cent. and adding twenty-five cents back.

Q. You say a verbal arrangement? A. Yes.

Q. From month to month? A. Yes.

Q. And in other words, it can be cancelled at any time then? A. Exactly.

7679 Q. And under that arrangement have you been purchasing the Mt. Lookout coal since June 1st, 1913? A. Yes.

Q. Taking deliveries where? A. At the mine.

Q. Will you restate the deal you made with Mr. Law to buy that coal after June 1st, 1913? A. From June 1st, 1913, the Lehigh Valley Coal Sales Company has been purchasing coal from the Mt. Lookout Coal Company, the basis of settlement being f. o. b. tide price for Wyoming region coal, less twenty-five cents per ton, de-

7680 ducting sixty-five per cent. of the payment and adding back twenty-five cents a ton.

Q. Mr. Skeele, John W. Skeele, was president of your company up to September, 1912, as I understand you? A. Yes.

Q. Therefore, he was president during the months of this cessation in the work and the immediate months following the resumption of work that spring? A. Yes.

Q. Do you know whether under his direction there was an advance in the price you sold your coal at? A. There was.

Q. Of how much? A. Twenty-five cents a ton on pre- 7681
pared sizes.

Q. What difference, if any, was there from the discount of the circular price in April and May of 50 cents a ton? A. There was no discount in April, and not in May, with the exception perhaps of the latter part of May. I am not quite sure about it.

Q. But practically April and May? A. Practically all of April and May.

Q. Now, going back to the deal with the Mt. Lookout, the 25 cents a ton which you spoke of as deducted from 7682
the 65 per cent., is the 25 cents which was the added price following the resumption of work in the Spring of 1912, is it not? A. Yes.

Q. That deal you made to buy that coal? A. I did that.

Q. You completed it? A. Yes.

Q. Now, since December 31, 1913, have you been paying the Mt. Lookout Coal Company a Pennsylvania State tax of 2½ per cent. on the total value of the coal purchased? A. That is my recollection.

Q. There was a contract with the Forty-Fort Coal 7683
Company in existence March 1st, 1912. Was that carried out by your company for some time, and if so, to what date? A. Just the same as the Mt. Lookout.

Q. The same date, June 1st, 1913, did you make a new deal? A. Yes.

Q. With whom? A. Mr. Law, who was president of that company also.

Q. And on the same basis as the Mount Lookout? A. Yes.

Q. And under that verbal arrangement, and tempor- 7684
ary one, you have been purchasing coal from the Forty Fort Company, that is the Fort Fort colliery and the Harry E of that company ever since, have you? A. Yes.

Q. And you are working under that form of a verbal contract as to that coal today? A. Yes.

Q. And so you are as to the Mount Lookout today? A. Yes.

Q. Now, you have purchased coal from A. Pardee & Company since March 1st, 1912, haven't you? A. Yes.

7685 Q. And up to January 1st, 1913, it was upon the same terms as the contract theretofore existing, that is, existing before March 1st, 1912, between your company and the Lehigh Valley Coal Company, is not that it? A. That is right.

Q. And that as well as the other contracts to which I referred are mentioned in the contract of March 1st, 1912, that you were to take over, are they not? They may not be specifically mentioned, but I mean you were to take over the 65 per cent. contracts? A. That is right.

7686 Q. After January 1st, 1913, did you make a new arrangement with A. Pardee & Company? A. I did.

Mr. Machen: That is A. Pardee & Company, is it?

Mr. Warren: Yes.

Q. You made a new arrangement January 1st, 1913, under the terms of which you sold their coal upon an agreed commission basis, isn't that right? A. That is right.

7687 Q. Then there is some provision in it as to the charges you expend in case coal is stocked, isn't that right? A. That is true.

Mr. Warren: I don't assume there is any materiality as to that, but the Government, if they care to, can go into that.

Q. Now, among the sixty-five per cent. contracts in existence, to which the Lehigh Valley Coal Company was a party, was another one with the Raub Coal Company, wasn't it? A. There was.

7688 Q. Was that carried out until June 1st, 1913, by your company? A. Yes.

Q. And after June 1st, 1913, did you make a new deal with the Raub Coal Company? A. Well, there was a modification of that in December 31, 1912, with Raub.

Q. Which was associated with the Louise colliery? A. Yes, applicable to the production of Louise Colliery.

Q. Which is the name of the colliery of the Raub Coal Company, is it not? A. Yes.

Q. Well, there was a modification on the first of Janu-

ary, 1913, which involved some variation in the price to 7689
be paid for certain sizes, was there? A. Yes.

Q. And was there a new contract made January 1st, 1913, by the Sales Company with the Raub Coal Company? A. Yes.

Q. Was it a written contract? A. Yes.

Mr. Warren: I hand to the counsel for the Government the contract of the Raub Coal Company.

Q. Was this contract which you made with the Raub 7690
Coal Company of January 1st, 1913, a terminable contract? A. It is.

Q. For what length of time is it? A Terminable by either party on three months' notice. (Reading) "This contract shall continue and be in full force and effect from the 1st of January, 1913, until either party hereto shall give three months' notice in writing to the other of its intention to terminate the same."

Q. Will you read from this contract the two clauses which the Government counsel say they would like to have read into the record? A. (Reading) "The buyer 7691
agrees to buy, and the seller agrees to accept the following prices for such coal when prepared in accordance with the standard hereinafter set forth delivered f. o. b. cars at breaker. All sizes above pea coal 25 cents a ton less than the price which the buyer advertises by its printed circular for all sizes above pea of Wyoming coal in the month marketed, for delivery at line points in the buyer's territory; for pea coal 15 cents a ton less than the price which the buyer advertises in its printed circular for that size of Wyoming coal in the month marketed, 7692
for delivery at line points in the buyer's territory; for all sizes under pea coal, 10 cents a ton less than the price which the buyer advertises for its various sizes below pea in Wyoming coal in the month marketed for delivery at line points in the buyer's territory."

Mr. Machen: What is the buyer's line territory?

The Witness: The stations and the towns on the Lehigh Valley Railroad from Bound Brook on the east to Athens, Pennsylvania, on the west.

7693 Q. You have now covered, have you not, all the contracts which you have for the purchase of anthracite, and have had since your entry into business? A. Yes, sir.

Q. You do buy some bituminous, do you not? A. Yes.

Q. The purpose of your buying bituminous is what? A. To accommodate those customers, mainly in the west, who desire to buy their soft coal at the same place and time they buy their hard coal.

Q. Now, during the time of the negotiations leading up to the various contracts with the coal company of
7694 which you have spoken, you have already said you had no knowledge or intimation of that which actually happened the following Spring; to wit, the suspension on the part of the miners, which was a matter of about six weeks, as I understand it, and the increased wages accorded miners? A. That is correct.

Q. You had no knowledge whatever? A. No.

Q. What did this suspension cause in connection with the demand for anthracite coal that was stored? A. The suspension decreased the supply.

7695 Q. Did it create an unusual demand for coal? A. It created an unusual demand for coal.

Q. Did it exhaust the coal in stock, this abnormal demand, or practically so? A. Practically, yes.

Q. How long did the demand continue, was it practically throughout the year, or a shorter term? A. The demand continued well into the winter of 1912-13.

Q. What would you say as to the normality or abnormality of business in the year 1912, as compared with 1913 or 1914? A. That it was strikingly abnormal.

7696 Q. Your company had the benefit of the 25 cents advance in price of prepared sizes in its sales, did it, throughout that year, and indeed it has continued since, has it not? A. Yes.

Q. Was there any knowledge or even expectancy of such an advance in price as of the date of the making of these various contracts prior to the date March 1st, 1912? A. None whatever, so far as I am aware.

Q. The Government has spoken of your profit as a sales company since your organization, and treated it somewhat at length as being enormous. Well, what they

meant to intimate by that I don't know, for whether 7697
normous or enormous, they are the profits of your company, but let me ask you about that. Your profits were large in 1912, were they not? A. Yes.

Q. That is, larger than what might be called normal profits? A. Larger than expected, very much larger than expected.

Q. Aside from the cash dividend which your company declared in the winter of 1912-13, you have paid dividends at the rate of ten per cent. annually since your existence, starting, however, the first one, in October 7698
of 1912, isn't that right? A. That is right.

Q. Now, that cash dividend was declared out of a surplus created by what, by the normal business of that year, by this increased price in the abnormal business of that year? A. Yes.

Q. And that cash dividend was applicable in the stockholders' profit, under a circular which you issued, which is already in evidence, to be used by them to be subscribed for stock, additional stock in the Lehigh Valley Coal Sales Company, was it not? A. It was.

Q. Or practically speaking, it was used in that way? 7699
A. Yes.

Q. The Government's statement as to that declaration appearing upon page 72 undoubtedly was not intended to be ambiguous, and it may be my own stupidity in interpreting it, but it gives me the impression that it is an attempt to charge what practically amounts to a 50 per cent. dividend. I will ask you whether I am right or not in my interpretation of that language, whether the fact was not this, that you declared a cash dividend of 25 per cent. on your capital as it stood of that date, to 7700
wit, practically speaking, $6,000,000. That is right, isn't it? A. That is right.

Q. And to your stockholders at that time you declared the cash dividend, you sent out a circular giving them the privilege to utilize the cash dividend in acquiring or subscribing, rather, for additional stock of your company which you proposed to issue, isn't that right? A. That is right.

7701 Q. So that it amounted only in its totality to the issuance of a cash dividend of 25 per cent. of your capital as it then stood? A. Yes.

Q. Which might be utilized by its stockholders either to subscribe for stock or take the cash, as they saw fit? A. Yes, it amounted practically to a conversion of a liability from a surplus liability to a capital stock liability.

Q. Exactly. In its entirety, practically speaking? A. It was a change from one balance sheet item to another, with the exception of a few who did not avail themselves
7702 of that privilege.

Q. What expectation, if any, is there as to any unusual or abnormal profit, if there can be such a thing as abnormal profit, for the year 1914?

Mr. Machen: Objected to as pure speculation.

A. I know of none.

Q. Of course, a very large portion of the increase in price in 1912 inured to the benefit of the coal company, did it not? A. Yes.

7703 Q. At the same time your company benefitted also? A. Yes.

Q. Will you state whether the representatives of the Coal Sales Company throughout all these negotiations with the representatives of the Coal Company did or did not act independently of any possible interest either with the Lehigh Valley Coal Company or Lehigh Valley Railroad Company, and solely for what they regarded to be the equities of the Lehigh Valley Coal Sales Company? A. I know that I did, and I had every reason to believe Mr. Skeele did.

7704 Q. And you were right with him while you were doing it? A. Yes.

Q. Do you know whether the Sales Company in the actual rehandling of the coal in storage which it purchased from the Coal Company found any degradation and had to suffer any loss in its working out of these stocks? A. It did. You cannot possibly handle coal without causing degradation.

Q. As a matter of fact, the maintenance of storage plants are essential to a company doing as large a business as your company does, are they not? A. Yes.

Q. Just tell us why briefly? A. Because at certain seasons the demand slackens very perceptibly, and at other seasons the demand is greater than the normal output of the mines. In order to supply our trade in the times of great demand it is necessary to accumulate some stock as against that time when the demand will be greater than the production. And at other times the demand for a certain size or sizes will be very slack, while as to the other sizes the demand will be normal. Therefore, in order to produce and sell the normal demand for certain sizes, you must take care of this surplus of other sizes. 7705 7706

Q. You contracted to purchase the Lehigh Valley Coal Company's coal month by month, did you not? A. Yes.

Q. Quite irrespective of whether you could find markets for all of the sizes of that coal, month by month, did you not? A. Exactly.

Q. You had to take it and pay for it the next month? A. Exactly.

Q. And if you did not have any demand for a certain proportion of certain sizes, or all of certain sizes, or, indeed, all of all sizes, you had to take care of it somewhere? A. Yes, sir. 7707

Q. Storage plants, then, are an added cost and expense, so far as the Lehigh Valley Coal Sales Company is concerned, to the transaction of its business, are they not? A. It is an added charge.

Q. And as the Secretary of the Sales Company at the time of its organization, tell me whether the Lehigh Valley Railroad Company ever subscribed or owned a single share of that stock? A. It did not.

Q. Or the Lehigh Valley Coal Company? A. It did not. 7708

Q. Or any of the concerns named in the cover of the Government petition as the defendants, namely, Coxe Brothers & Company, Incorporated, Delaware, Susquehanna & Schuylkill Railroad Company, New York and Middle Coal Field Railroad and Coal Company, and G. B. Markle & Company? A. They did not.

Q. Will you say you have attended all the meetings of the directors of the Lehigh Valley Coal Sales Company

7709 since its organization, or couldn't you quite say that? A. I think I have attended all but one.

Q. Have you personally devoted your entire time to its business since its organization? A. I have.

Q. Have you been in close touch with its affairs, first as Vice-President, and since as President, throughout its organization down to this date? A. Yes.

Q. Would you say you were sufficiently in touch with its affairs as discussed among its executive officers and others, and also as discussed at its directors' meetings,
7710 and acted upon either by executive officials and reported to the directors, or otherwise, or acted upon by the directors, to tell us how its business has been conducted since its organization? A. Yes.

Q. What would you say as to the integrity of the organization, the conduct of it for the best interests of its stockholders as viewed by its directors, and its attention to its own business and to its development since its organization. Tell us the facts as to that, now? A. The business is run for the benefit solely of the Lehigh
7711 Valley Coal Sales Company. The interests of that company are first in the minds of the directors.

Q. First in war and first in peace? A. Correct.

Q. Have you ever had occasion to note the slightest effort on the part of any other outside concern to either dominate the affairs of your company or attempt to in any way? A. I have not.

Q. Have you ever noticed or heard of any such thing in any directors' meeting, or in any discussion among executive officials in which you have participated? A. None whatever.

7712 Q. Is its business conducted as any legitimate business concern is, so far as you know? A. It is absolutely independent of any other.

Q. Its stock is sold on the curb? A. Yes.

Q. It was listed—the application for which I have already offered in evidence? A. It was.

Q. You paid one hundred dollars to permit you to be listed among the industrials whose stocks are listed on that exchange? A. That is my recollection of the matter.

Q. And there are transfers of your stock, and it is sold 7713
in the public market, quoted in the newspapers and other brokers' lists of stocks, industrial stocks, and otherwise? A. Yes.

Q. And transfers being made from day to day? A. Yes.

Q. And changes in the personnel of your stockholders? A. Daily.

Q. What would you say to whether New York was or was not the most favorable market for the sale of coal which you either purchase or handle on commission? 7714
A. I would say it was not the most favorable market.

Q. Would you say that the statements are correct which have been offered here by some of the witnesses for the Sales Company, that about 12 per cent. of your total coal which you handle represents the quantity, or proportion of it which you handle at harbor points? A. I should say that was too high.

Q. Have you any knowledge of any domination by the Lehigh Valley Coal Sales Company over the marketing of anthracite, either at any point on the line of the 7715
railroad or elsewhere? A. It has no domination.

Q. As you understand it, isn't your company in competition with other dealers in anthracite practically at every place you sell coal? A. It is.

Q. Do you know of a single point in the United States or Canada, or anywhere else, where you sell coal that somebody else is not selling coal? A. I cannot name any place where somebody else is not selling coal, or could not sell coal.

Q. You don't know of any, as you are familiar with the affairs of the company? I mean you meet with com- 7716
petition everywhere? A. Everywhere.

Q. The Government upon page 17 of its petition says that your company is a party to a combination or conspiracy to restrain and monopolize, and have been and are attempting to monopolize and are monopolizing the production, transportation and sale in Interstate Commerce of anthracite coal, for certain reasons which it sets forth on page 17. What do you say as to that? A. That is untrue.

7717 Q. What powers has the Lehigh Valley Railroad Company got over your company in any way, or control over it? A. None.

Q. What power or control has it ever attempted to suggest that it had? A. None.

Q. You ship a large quantity of coal over the lines of that railroad? A. We do.

Q. You pay the published tariff rates? A. Yes.

Q. You pay demurrages at times when the cars are detained longer than they think they ought to be? A. Cer-

7718 tainly, under the rules.

Q. Do you know of any preferences or discriminatory favor or advantage you have as a shipper over any other shipper along the lines of the Lehigh Valley Railroad? A. I do not.

Q. Is there any other or different treatment by that railroad of your company than is the treatment other railroads in the United States give your company as a shipper over those roads? A. No.

Q. That you ever heard of? A. No.

Q. You ship over a large number of railroads in the

7719 United States, do you not? A. Yes.

Q. Many in the west and several in the east? A. Yes.

Q. Well, your constant effort is to increase your shipments over railroads as an incident to your enlargement and development of your trade, isn't it? A. Yes, sir, it is.

Q. Please turn to page 35 of the petition. After naming the companies other than the Lehigh Valley Coal Company from which you have purchased coal since your organization, what have you to say as to the propriety

7720 of the statement the Government makes on page 36, that your company continues to purchase coal from substantially the same independent operators, the names of which appear upon page 35? A. We don't purchase from Austin Coal Company, Lentz & Company, nor Temple Iron Company, nor Babylon.

Mr. Warren: The Temple Iron Company is only mentioned as a holding company, not mentioned as purchasing directly from them.

The Witness: Nor Pardee Bros & Company, 7721
nor Harwood Coal Company, nor Evans Colliery,
nor William H. McCawley, nor A. F. Wolfe.

Q. Nor Mid Valley Coal Company, you don't buy any coal from them? A. No.

Q. You have answered me rather specifically, and having previously named the companies you did buy from, you can say they are the only ones you buy from, and in so far as their names appear on this list, you do buy from them, but no further? A. Exactly. We buy from 7722
fewer in that list—less than half.

Q. Less than half? A. Yes.

Q. Now, as to the G. B. Markle Company, you have been acting as its commission agents since March 1st, 1912, have you not? A. Yes.

Q. I have asked Mr. Evans somewhat in detail as to your business transactions as its commission agent, and I don't want to repeat. I would like to summarize that by asking you whether it is not true they dictate the prices, and at all times control the disposition of their coal, and require their approval of all sales you make? 7723
A. Exactly, just as the contract provides.

Q. And the leases of facilities when you took over, you necessarily took them over, didn't you; to carry out the deal with the coal company, you had to take all they had? A. Yes.

Q. Whatever they were, wherever they were, and whatever the terms were? A. Exactly.

Q. What attention, if any, has been paid by your company since your taking over these leases, either to what road the lessees used to get their coal to these facili- 7724
ties, or as to the quantity or tonnage they purchased from the Lehigh Valley Coal Sales Company? A. We have not paid any attention to that.

Q. You have tried to sell them, I assume, all the coal you could? A. Certainly.

Q. And all they desired to take? A. Yes.

Q. You have made no point about whether they did or did not buy any given quantity from you any more than they did buy, or anything of that kind? A. No.

7725 Q. Nor have you had anything whatever to do with the question of the methods by which they used these facilities for commission business? A. Exactly. They don't amount to very much in the matter of tonnage.

Q. Now, you sublet from the Lehigh Valley Coal Company certain storage plants which it was in possession of on the first day of March, 1912, and also leased from that company certain facilities which it itself owned as of that date, did you not? A. We did.

Q. And you agreed to pay certain rentals to the Le-
7726 high Valley Coal Company for your occupancy as a tenant of those premises, didn't you? A. That is right.

Q. Do you recollect an appraisal having been made of those premises by Mr. Wilgus, prior to the making of these contracts, and the lease, by your company, from the Lehigh Valley Coal Company? That is in evidence here. I do.

Q. And you recall, I have no doubt, the figure agreed upon in the contract that you were to pay, four per cent. of the appraised valuation of those facilities, don't you? A. I do.

7727 Q. Plus taxes, insurance, and such expenditures by way of maintenance, that is to say, renewals and repairs, as were essential to keep that up in good shape. Do you remember all of that? A. Yes, that is true.

Q. What would you say as to the fairness, as a business proposition, the propriety, the reasonableness of the prices agreed upon by your company with the Lehigh Valley Coal Company for those storage plants, in view of the obligations imposed upon you as lessee in connection therewith? A. I should say they are fair.

7728 Q. Were they a matter of consideration and bargaining? A. Much consideration and bargaining.

Q. And finally agreed upon? A. Yes.

Q. As in the view of the business, what, with reference to fairness and justice to both landlord and tenant, as being fair or otherwise? A. As being fair.

Q. The figures appearing upon page 13 of our answer, to which Mr. Summers has testified, who is your Auditor, are correct, are they not, and you have been associated with him in the matter of the preparation of

those figures, or were, rather, in the preparing of this answer, were you not? A. Yes. 7729

Q. What would you say as to whether these storage plants are essential to small or comparatively small trading companies in anthracite? A. I should say that they are not essential to a small company. They are too expensive for a small company, as a rule.

Q. We have added in our answer the names of certain storage plants and facilities which we acquired which were not covered in the Government's petition, do you find that, and the names of several? A. Yes. 7730

Q. As a railroad man, what would you say as to whether it was essential and usual and a customary thing for railroads throughout the country to furnish storage plants and facilities for shippers on their line, if they were consequential enough in the volume of their shipments, to make it desirable as between the shipper and the railroad company? Isn't it a matter of universal practice? A. All the railroads I have been connected with or in any way familiar with as respecting that, welcome and encourage any kind of industry to locate along their line, and erect plants along their line. 7731

Q. Of course, it is a selfish purpose in a sense, because it means if that industry gets to be one of consequence it will furnish an increasingly large volume of freight shipments over the line of the railroad? A. Exactly.

Q. Has any attention ever been paid in the slightest degree, as to any leases which you are interested in, for facilities of any kind, as to whether they confined their purchases to your company? A. I don't recall any.

Q. Do you happen to know how close the Lehigh Valley Railroad lines are to the lines of the Central Railroad of New Jersey, say, at Phillipsburg? A. They are very near, but I cannot give you any more definite answer than that. 7732

Q. Well, as a matter of fact, are they not as close as the width of this room? A. I think so.

Q. Don't they cross the Delaware River there side by side on two bridges, and don't they run right together? A. I do recall that now, yes.

7733 Q. And then diverge some half a mile or so from the east bank of the Delaware in different directions to cross the State of New Jersey? A. Yes.

Q. Do you happen to know how close to the line of the Lehigh Valley and the Central Railroad of New Jersey, at Phillipsburg, the Belvidere branch of the Pennsylvania Railroad is? A. My recollection is that they are all right there together.

Q. Now, take it at Allentown, how close to the Lehigh Valley Railroad is the Central Railroad of New Jersey
7734 through that stretch of flat land there on the south side of the Lehigh River running, say, from Slatington north of Allentown down towards Allentown, and, indeed, to Bethlehem, around the curve. Have you ever noticed that especially, or haven't you? A. In many places I should say ten or fifteen feet.

Q. Yes. The fact is, the right of way lines are absolutely adjoining A. Yes.

Q. I ask you to consider for a moment the criticism of the Government as to a circular issued by the Lehigh
7735 Valley Railroad Company under date of January 19th, 1912, which they have offered in evidence, in which, among other things, it is stated that the privilege accorded the stockholders of that company to subscribe for the stock of the Lehigh Valley Coal Sales Company, which the circular says the Board of Directors of the Lehigh Valley Coal Company had authorized the organization of, was to be availed of by subscribers in this way. I read the exact sentence: "Stockholders who avail themselves of this privilege, must subscribe for the whole of their allotment as a subscription for a por-
7736 tion of the allotment will not be considered." The Government says upon page 66 that the Lehigh Valley Railroad Company conceived the plan of organizing the Lehigh Valley Coal Sales Company, "whose stockholders should be identical with those of the Lehigh Valley Railroad," and that, page 68, "to further secure practical identity between the stockholders of the two companies, it was provided that no stockholder of the railroad could subscribe at all unless he subscribed for the whole

of his allotment." Now, what have you to say as to 7737
the association of this charge with this provision in the circular? A. The provision in the circular was, as I understand it, purely as a matter of convenience in handling.

Mr. Machen: You understand?
Mr. Warren: That is what he said, yes.
The Witness: Yes.

Q. Go on. A. It could not force identity.
Q. Just tell us why? A. It could not force a stock- 7738
holder to subscribe.
Q. What is the propriety of a charge by the Government of the United States against the Lehigh Valley Railroad that its purpose was to secure practical identity by reason of that provision in the circular? A. I cannot see any propriety.
Q. Now, you have already said that the plan was to provide for the discontinuance by the coal company as of a given date, of all business transactions other than in the State of Pennsylvania, haven't you? A. Yes. 7739
Q. And the turning over of its business other than that in the State of Pennsylvania to what it was arranged to be a concern known as the Lehigh Valley Coal Sales Company? A. Correct.
Q. It was essential therefore that it should be as of a given date, wasn't it? A. Exactly, certainly.
Q. Now, the circular further provided that those of the stockholders of the railroad who did not desire to subscribe for stock of the Sales Company, that the stock of the Sales Company would be assured in effect by 7740
Drexel & Company, doesn't it? A. That is it.
Q. That is, they were going to take over the balance? A. Yes.
Q. Was it not essential that, in view of the enormous sums that were required in order to equitably and fairly treat both the Sales Company and the Coal Company, that on a given date that that capital should be on hand? A. They had to have it, otherwise the company could not go ahead and do business and carry out its purposes and contract which it had made with the Coal Company.

7741 Q. It already appears in evidence that the Railroad Company has got I don't know how many thousand stockholders, but several thousand stockholders, that is appearing in the list which the Government offered in evidence as of March 28th, 1914, scattered all over the country, and, indeed, in foreign lands. Would it not have required an indefinite delay, or at least, some delay, in completing the transactions between the Sales Company and the Coal Company if there were no assurances as to the completion of the capital in cash, of the
7742 Sales Company, by the 1st of March, 1912? A. Certainly.

Q. Now, you did precisely this same thing when you issued that circular in the late Fall of 1913 as to the privilege to be accorded your stockholders in the subscribing for additional stock of your company, didn't you? A. Yes.

Q. That certainly could not have been associated with the matter of identity between the stockholders of any other company, could it? A. No.

7743 Q. And what was your purpose in that? A. Convenience of accounting, convenience in making the distribution of a dividend, and in obtaining the subscriptions and convenience for the stockholder. If a man wanted to subscribe and use his cash dividend to subscribe, all he had to do was to sign one paper, and in due course he got his certificate of stock, and he had no further bother.

Q. What importance, then, if any, has this charge as bearing upon the effort to, or the charge of an effort to secure an identity of stockholders in interest?

7744 Mr. Machen: Note an objection on behalf of the Government to all this testimony as to opinions and conjectures and the like of the witness as to what the effect might have been as to this, that or the other provision.

The Witness: None.

Q. Will you tell us whether the contract of March 1st, 1912, necessarily hinders and prevents the Lehigh Val-

ley Railroad from fixing its rates for transporting coal according to recognized and legitimate standards? 7745

Mr. Machen: Same objection.

Q. That is, the Government charge upon page 73. What do you say as to that, whether it does it or not? A. It does not.

Q. What have you to say as to the charge that this same contract introduces a factor which may not be considered consistent with the rights of the public, if that is definable to anybody? 7746

Mr. Machen: Same objection.

Mr. Warren: I object to the charge, if the Counsel objects to the repetition of it, as it is vague and indefinite, and not consistent with any facts whatever, or any proof thereto on the part of the Government in the trial of this cause.

Mr. Machen: My objection was to asking the witness his opinion as to a matter upon which he is not qualified to speak, and which is largely, if not entirely, a matter of law, and of inference, whereas, a witness is only competent to speak as to definite facts within his knowledge. 7747

Q. You have already said that your company and its officers fixed the prices upon all the coal you sell? A. Yes.

Q. And you have said that in your judgment less than 12 per cent. of the coal which you sell or handle goes to tidewater points? A. Yes, that is easily ascertainable accurately. 7748

Q. Will you state whether you have any knowledge as to the result of all your conferences with railroad officials or Lehigh Valley Coal Sales Company officials, of any expressed intention on the part of the Lehigh Valley Railroad to secure, or attempt to secure, the identity of stockholders between the railroad and the Coal Sales Company? A. No.

Q. Have you any knowledge as to who the stockholders of the Lehigh Valley Railroad are? A. No.

7749 Q. Or whether it is true that a group of persons in the aggregate own a majority of its stock, or any proportion of its stock? A. I have no knowledge as to stock ownership of the Lehigh Valley Railroad Company.

Q. Supposing the Lehigh Valley Coal Company had not sold you its stock or its storage coal, and it had continued in business, it would have had to suffer the loss, would it not, due to degradation incident to rehandling your stock coal? A. Certainly, we would not have had it if they had been handling it.

7750 Q. Were there discussions in your conferences as to your agreement afterwards formulated and embraced in the contract of March 1st as to developing the markets and improving markets otherwise not profitable, and was that one of the considerations entering into the final contract as made? A. Yes, we were to, as I stated before, continue markets, or——

Q. I asked you if there were discussions in those negotiations on those subjects? A. Yes. I did not follow the question closely. There were.

Q. In connection with the abnormal demand for coal
7751 in the year 1912, will you state whether there came to your knowledge in connection with that demand the expressed fears of customers as to possible shortages in the fall of the year? A. There were a great many fears expressed, or fears expressed in a great many quarters

Q. Did that enter into and constitute one of the factors in this increased demand? A. Yes.

Q. Now, your company did a gross business under the figures in evidence for 1912 of upwards of $35,000,000, and for the year 1913 of approximately $40,000,000,
7752 upon a capitalization as to the first year of $6,060,000, leaving out the hundreds, isn't that so? A. It is.

Q. And as to the second year upon a capitalization in round numbers of $7,000,000, isn't it? A. Well, the capitalization of $7,000,000, the increase was made the latter part of the year.

Mr. Machen: $6,000,000 most of the time.

Q. Most of 1913 it was $6,000,000? A. Yes.

Q. Now, what occasion have you had, and for what purposes, in the matter of borrowing money, and in what sums? Tell us. I don't mean to descend to exact particulars, for I have put in the records of such matters, but tell us broadly the necessity for that, and the necessity for your company having a credit to enable it to make such loans? A. The necessity for borrowing results from stocking coal, investing money in large amounts of coal which it was necessary to carry in the summer months, accumulate and carry into the winter. That is the main reason. That is the main reason for our having to borrow money because the aggregate invested in coal and the outstanding accounts receivable together make more than our capital. 7753 7754

Q. And in the aggregate didn't that require your borrowing in the last two years of your existence money aggregating over $2,000,000? A. Yes.

Q. So that these borrowings are very large sums that are required? A. They are.

Q. I notice in your record that you borrowed $1,000,000 from Drexel & Company the first month. A. That was necessary. 7755

Q. And then you borrowed at different times from the First National Bank of New York, from Drexel & Company, and I think from the National City Bank different sums, $300,000, $500,000, $200,000 at different times? A. That is correct except as to the National City Bank. We made no loans there.

Q. Do you know who selected the first Board of Directors in your company? A. I don't know. Mr. Skeele submitted this list, and said these gentlemen would be the first Board. 7756

Q. I see. Well, among them is Mr. Lloyd? A. Horatio G. Lloyd.

Q. Associated with Drexel & Company? A. In Philadelphia, yes.

Q. And also Mr. Hine? A. Francis L. Hine.

Q. Associated with what institution? A. President of the First National Bank of New York.

Q. Now, do you know why those gentlemen were asked to associate themselves with the directorate of the Sales Company? A. Well, when Mr. Skeele submitted this list,

7757 and we at various times discussed the business of the company, as we anticipated it, and could forecast it, this subject of loans came forward as very important, and we saw that it was necessary to have sufficient credit to enable us to go on and borrow money when we needed it, and men of such standing as they were considered to be the kind of directors that we wanted.

Q. To assist you in the matter of credits? A. Yes, as well as to have the benefit of their experience and advice in the general administration of the company.

Q. Now, you are accustomed to figures. Will you be
7758 kind enough to put down the figure forty million there, and tell me what per cent. a million and a half is of forty million? A. 3.75 per cent.

Q. Ten per cent. on $6,000,000 is what? A. $600,000?

Q. Yes. 600,000 is what per cent. of 40,000,000? A. 1.5 per cent.

Q. Will you tell also the reason for incorporating into the contract the provision that the Sales Company shall devote its entire time, as to anthracite business, to the product of the Lehigh Valley Coal Company's mines other
7759 than the purchasing and handling of the purchase and contract coal? A. Well, primarily to enable the Lehigh Valley Coal Company to mine as much coal as was practicable, as much coal as ought to be sold, and could be sold by an organization that gave its entire time and attention to its production.

Q. The Lehigh Valley Coal Company had as of that date a production from its mines of approximately 8,000,000 tons, did it not? A. Approximately 8,000,000 tons, I should say.

Q. What would you say as to the time and efforts of
7760 the Sales Agency force and officers of your company to properly handle and dispose of that, in addition to the coal covered in the Markle contract, as to whether it would require, or whether it was fair to assume it would require their entire time, or whether they could also use a lot more coal? A. It would keep them busy all the time.

Q. To handle that coal? A. Yes.

Q. What would you say then as to the fairness of that provision in the contract requiring you to confine your-

selves to, with the exceptions I have stated, to providing 7761
markets to enable you to buy this enormous volume of tonnage? A. That was a fair and reasonable provision.

Q. And in connection with that you recall in the contract the provision that you were to use your efforts to sell more and enlarge the sale and increase the output? A. Yes.

Q. Was this subject also a matter of consideration and conferences as between the officers of the Sales Company and the Lehigh Valley Coal Company prior to the actual making of the contract? A. It was. 7762

Q. And discussed pro and con? A. Yes.

Q. Has your company used its best efforts to carry out that contract in that regard as well as others, to increase and expand your trade? A. Yes.

Q. And develop markets? A. Yes.

Q. In competition with other persons handling anthracite? A. Certainly.

Q. Now, tell us please, about the so-called anthracite tonnage tax, how your company has treated that matter, and what benefit, if any, it has been to your company? 7763
A. The anthracite tonnage tax was enacted, as I remember rather suddenly. At any rate, we got very short notice from the Lehigh Valley Coal Company that the amount of that tax would be added to their bills against us for coal. We replied to them that we would endeavor to collect the tax, but we would have to meet competition and we could not collect the tax arbitrarily, without due notice given to customers, and many of our competitors were not charging the tax, not attempting to charge it, and not pretending to charge any tax, and naturally we could not assess and charge more for coal than they 7764
were, or we would not have sold any. In some markets we could collect the tax, but our strongest competitors there were not charging it, and we said to the coal company wherever we can collect this tax we will do so, and turn it over to you, and where we cannot, we will not stand for the increased charges. And matters ran along that way during from the 1st of July, when I think was the time it went into effect, in 1913, up until April 1st, 1914, at which time—and meanwhile I should say we had put a notation on our circulars sent to the trade that

7765 these prices were subject to the tax, that the tax would be added to those prices. But whatever we collected we turned over to the Coal Company; we did not profit by the tax, and this method of handling the tax, adding to each invoice as a specific item, 2½ per cent. additional to the price on account of Pennsylvania State tax, was a very cumbersome and troublesome method of collecting the tax, adding to the cost, and it was very troublesome in accounting, took extra men to handle it, and the trade did not like it; where they were willing to pay the tax
7766 they did not like to have it stuck at them each time, and to avoid all that trouble in accounting, and the general annoyance of it, on the first of April, 1914, ten cents was added to the price of prepared sizes, and five cents to the smaller sizes, which we found by computation was about equivalent to 2½ per cent. on the valuation. So that we pay the bills of the Lehigh Valley Coal Company, which includes the tax of 2½ per cent., specifically, and we recoup ourselves as best we can through this addition of ten cents and five cents, which, as I say, is about equivalent to the 2½ per cent., as well as it could be
7767 averaged up, and therefore, we are not—we don't receive any benefit whatever from the tax, but we suffer a disadvantage in its being a nuisance.

Q. I suppose you have hopes that it will be declared unconstitutional, haven't you? A. Yes, we have hopes.

Q. How would you say prices at New York Harbor ports compare with prices at other places for coal you sell? A. I would say reasonable.

Q. How do they compare? Are they bigger or smaller, how do they compare? A. The prices at New York
7768 harbor?

Q. The prices at New York harbor, how do they compare with the prices at some other places? A. Smaller.

Q. Now, you have a device which seems to interest the Government's counsel, and they have offered it in evidence, a letter head with your device on it? I am utterly lost to understand the significance of it from their point of view, and I am going to ask you about it. It is Government's Exhibit No. 59. Will you look at it please? You are very familiar with that letterhead, are you not? A. I am.

Q. And with that device, which I assume is the reason for their incorporating it as an exhibit? A. Yes. 7769

Q. Is it the practice of various dealers in anthracite, or at least such of them as you come in contact with as competitors, to have and adopt and use some sort of an advertising dodge or device or mark indicative of their particular business? A. I know that some of them do. I have never taken the trouble to look up all of them to see whether they do have anything in the nature of a trade mark.

Q. Is this device, if I may call it such, on Government's Exhibit No. 59 in colors, a registered trade mark so far as you know? A. No. 7770

Q. Did you have it registered? A. No, I did not have it registered.

Q. In connecton with the storage plants you lease, are you not constantly called upon to make expenditures by way of maintenance renewals and repairs? A. Yes.

Q. Will you state whether or not you are at this time making expenditures upon what is known as the South Plainfield plant? A. Yes.

Q. Of what character, involving substantial sums of money? A. Several thousand dollars. 7771

Q. You have spoken of taking over time contracts for the sales of coal that were in force March 1st, 1912, as between the Lehigh Valley Coal Company and certain customers of them. Did you carry out those contracts? A. We did.

Q. Have you now in force time contracts which you have made with customers, some of them for a month's duration, some for a year's duration, and some for more than a year? A. Yes. 7772

Q. Do you know whether you are now at this present time storing coal in stocking plants of your company due to the slack demand this month for coal? A. Yes.

Q. Usually, in your business, throughout the summer months, what is it necessary for you to do in that regard? A. To store coal.

EXAMINATION SUSPENDED.

A recess was thereupon taken until 2.15 P. M.

7773 AFTER RECESS.

Robert C. Hill, a witness called on behalf of the Lehigh Valley Railroad Company, being first sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. Mr. Hill, what is your business? A. I am vice-president of the Madeira-Hill Company, Incorporated, miners and shippers of anthracite and bituminous coal.

Q. Are you a shipper on the line of the Lehigh Valley
7774 Railroad? A. Yes.

Q. How long has your company been a shipper as such? A. Directly and indirectly for the last twenty-one years.

Q. How long have you been connected with the business? A. We were incorporated in December, 1893.

Q. Is your company a large shipper of anthracite coal? A. That is relative, yes.

Q. About what tonnage do you ship over the Lehigh Valley each year? A. Between 100,000 and 150,000 tons.

Q. Just in a general way is your tonnage over other
7775 lines as large as that? A. Larger.

Q. What is the name of the colliery where you mine coal? A. It is the Harleigh breaker of the Harleigh Brookwood Coal Company.

Q. That company is owned by the Madeira-Hill Company, is it? A. Yes.

Q. Is your company in competition with the Lehigh Valley Coal Sales Company in the sale of coal at points on the line of the Lehigh Valley Railroad? A. Yes.

Q. At strictly local points as well as points reached by
7776 other railroads? A. Yes.

Q. Have you ever found any evidence of, or found the condition to exist, that the Lehigh Valley Coal Sales Company dominated, as the petition in this case says, dominated the markets? A. The Lehigh Valley Coal Sales Company?

Q. Dominated the markets at points along the lines of the Lehigh Valley Railroad not reached by other railroads?

Mr. Machen: Objected to as a matter of opinion and inference. 7777

A. No.

Q. You have sold freely in those markets? A. Yes.

Q. And are still doing so? A. Yes.

Q. Do you sell in competition with the Lehigh Valley Coal Sales Company when you sell at line points? A. Yes, on some grades of coal. Of course, I mean from breakers similarly located to Lehigh Valley collieries; on the Lehigh Valley we get in competition with the coal in 7778 the Hazleton district.

Q. That is a great difference in the coal? A. Yes.

Q. Do you compete with the Sales Company at points on the lines of other railroads? A. Where the Lehigh Valley tariff reaches, you mean in New England?

Q. New England, Philadelphia, Baltimore? A. Yes, we do.

Q. Harrisburg? A. Yes.

Q. Have you ever suffered, or have you ever felt that there was any discrimination practiced by the Lehigh Valley Railroad Company against your company as a 7779 shipper in favor of any other anthracite shipper?

Mr. Machen: Same objection.

A. May I ask you a question in reference to your question?

Q. Yes. A. This has to do only with the Lehigh Valley Coal Sales Company as I understand it, and the competition with it?

Q. I will confine it to the time since March 1st, 1912; that is the time the Sales Company began? A. No. 7780

Q. Have you received fair and impartial treatment on the part of the Lehigh Valley Railroad as a shipper of anthracite coal?

Mr. Machen: I object to it for the same reason.

A. So far as I know I have.

Q. Have you seen the list of dealers which is set forth on pages 52 to 55 of the petition of the Government in this case? A. No, sir.

7781 Q. I will ask you to look at that list on those different pages and just in an off-hand way, without attempting to make it complete, tell us which of them you sell to. A. You mean by name or by number?

Q. By the name and location, if you please? A. That we are selling to now or have sold?

Q. Let us take within the last year? A. My information would be a little incorrect, simply due to the fact that a great many of these are within the Philadelphia office territory, with which I do not come in contact at
7782 all. Our sales through this New York office take only north of Long Branch and Newark and Elizabeth and New England markets. Our Philadelphia office takes care of that and I would not recognize these various customers.

Q. And your immediate jurisdiction is east of Newark and Elizabeth then? A. East and north.

Q. That practically excludes all that list then? A. I recognize some of them, J. H. Lucky, for instance, at Newark we are selling.

7783 Q. That being the case, that practically excludes the whole list? A. Yes, so far as I am personally concerned. The Philadelphia office would be familiar with it.

Q Do you market the coal of any other company than the Harleigh-Brookwood Company? A. On the lines of the Lehigh Valley Railroad?

Q. On the lines of the Lehigh Valley Railroad? A. We are not doing it to any extent now though we have been doing it within the last three or four years.

Q. Do you object to stating from whom you buy coal? A. From J. S. Wentz & Company, Mill Creek Coal Com-
7784 pany, Kingston Coal Company. There are probably others I do not recall.

Q. Is your company one of the largest that handles its own product? A. I think so.

Q. Did you compete during the time the sixty-five per cent. contracts were in existence with those who purchased coal under those contracts?. A. Yes.

Q. And that was an active competition? A. Yes.

Q. And were you able to make a profit during that period? A. We paid out salaries regularly.

Q. And something more? A. And something more. 7785

Q. What have you to say as to the existence of competition in the sale of anthracite coal at the different markets? A. I don't think I understand your question.

Q. Is there keen competition in respect to the sale of coal, we will say at New York Harbor? A. I should think more so in New York Harbor than almost anywhere; there are more factors.

Q. Is there keen competition in respect to the sale of anthracite in Philadelphia? A. Not quite so much as in New York. 7786

Q. And at Buffalo? A. Yes.

Q. And throughout New England? A. And throughout New England.

Q. Over how wide a territory do you sell coal? A. Well, as far south I should think as Florida, throughout the Canadian provinces—I mean the maritime provinces; Prince Edward Island; as far west as Chicago.

Q. And through New England? A. And through New England.

Q. Does that New England coal move through New York Harbor? A. A great deal of it does; a great deal of it goes all rail. 7787

Q. And in what manner do you distribute it from New York Harbor? A. By barge.

Q. By different boat lines? A. By several boat lines.

Q. What have you to say as to the effect following the reduction in price of coal on April first? A. As to present bearing you mean?

Q. Yes. A. I think it is a very material advantage to the trade. I think it is an advantage to the miner to be able to market his product during the summer months. 7788 I think ordinarily the coal moves more freely; and of advantage to the buyer in being able to get his coal at a reduction during those months, which carries it over as against the winter's demand, and it works out in a more regular mining rate to the operator and a more evenly distributed supply, and I should consider it a very great advantage both for the miner, that is the shipper, and for the buyer.

Q. As well as dealers? A. I mean dealers by buyers.

7789 Q. Is any of the anthracite originating carriers interested in your company in any way? A. No, sir.

Q. Or any of the so-called railroad owned coal companies? A. No, sir, we have a very close corporation.

Q. Do you purchase coal from any of the so-called railroad owned coal companies? A. Yes.

Q. Which companies? A. The Philadelphia & Reading Coal & Iron Company, the D. L. & W., Dickson & Eddy representing the Ontario & Western, Susquehanna Coal Company, Lehigh Valley Coal Sales Com-

7790 pany.

Q. Do they sell to you freely? A. Yes.

Q. And without any partial or unfair treatment? A. We never discovered it.

Q. Have you ever noticed in any way any evidence that would make you think that the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Company were trying to deal unfairly with you or drive you out of business?

Mr. Machen: Objected to as a matter of opin-

7791 ion.

A. No.

Q. Do they ever use any improper trade methods in the sale and distribution of their coal? A. Not that I am familiar with.

Q. The competition which you have enjoyed with those companies has been an active and daily one, has it, for many years past, that is with the Lehigh Valley Coal Company up to March, 1912, and after that with the Lehigh Valley Coal Sales Company? A. Yes.

7792 Q. Are your offices located in this building at 143 Liberty Street? A. Yes, sir.

Q. What other coal companies are located here that you are familiar with? A. Philadelphia & Reading Coal & Iron Company, Meeker & Company, Whitney & Kemmerer. I don't know of any more.

Q. Is your company in competition in the sale of coal with Whitney & Kemmerer? A. Yes.

Q. Does your company also sell bituminous coal? A. Yes.

Q. Along the line of the Lehigh Valley Railroad? A. 7793
Yes.

Q. In large quantities? A. Yes.

Q. Approximately what tonnage do you market? A. On the Lehigh Valley Railroad Line?

Q. On the Lehigh Valley Railroad Line? A. I would not make any estimate of that without looking at the books.

Q. Would it be over 100,000 tons do you suppose? A. That would simply be a guess which would not be anywhere near accurate; I don't know. 7794

Cross-Examination by Mr. Gordon:

Q. You are the same Mr. Hill who testified on behalf of the defendants in the case of the United States against the Reading Company, which is sometimes referred to as the new Reading case, are you not? A. Yes.

Q. And your offices are in this building, 143 Liberty Street? A. Yes.

Q. And you lease your offices from the Jersey Central Railroad? A. Yes. 7795

Q. You are one of the largest producers who sell their own coal? A. That is what I testified to, yes.

Q. And how large a proportion of your coal do you sell upon the Lehigh Valley Railroad? A. I said between 100,000 and 150,000 tons, and I suppose we are producing between a million and 1,200,000 tons.

Q. You own the collieries? A. We own the companies which are producing the coal.

Q. You ship over the Lehigh Valley Railroad, however, only the coal which originates on the Lehigh Valley Railroad? A. And that which we have produced. 7796

Q. That which you have produced along the Lehigh Valley Railroad? A. Yes; it would be very hard to ship any other.

Q. You said, if I understand you correctly that you thought the competition was keener at New York than elsewhere because there were more factors here; what did you mean by "more factors?" A. I mean more coal companies; all service concentrated here as against the other markets where they do not; Philadelphia, Boston

7797 and Buffalo, which are competitive points don't have all the companies represented in those other markets; they all do here in New York.

Q. Where do you sell your coal principally on the Lehigh Valley Railroad? A. Along the line of the Lehigh Valley Railroad or at Perth Amboy or through New England.

Q. Do you sell at prices lower than the Lehigh Valley Coal Sales Company? A. We don't unless we have to, and if we can, we sell higher.

7798 Q. Are you usually able to sell higher? A. I don't know what you mean by usually; there are times when we may.

Q. There are times when you may, but under normal conditions are you able to sell higher than the Lehigh Valley Coal Sales Company? A. I wouldn't say that we were, no.

Q. Do you follow the practice of maintaining a reduction in the price of coal during the summer months? A. Yes.

7799 Q. That is the common practice, not confined exclusively to the Railroad Coal Companies, is it? A. Not at all.

Q. How much coal have you bought from the Lehigh Valley Coal Sales Company during the past year? A. You mean a year ago from August first, say?

Q. Yes, within a year? A. I can give you a broad range; I should say between 10,000 and 30,000 tons; I don't know.

Q. On how many occasions did you purchase coal from the Lehigh Valley Coal Sales Company? A. I don't

7800 think I understand what you mean by how many occasions.

Q. How many distinct purchases? A. I haven't any idea of what that would be without reference to the books. You mean whether we buy in large lots?

Q. Whether in large lots from the Lehigh Valley Coal Sales Company or whether you buy it in small lots? A. I should say we buy more in larger lots of anywhere from 500 to 1,000 tons.

Q. What sizes? A. Various sizes.

Q. All sizes? A. All sizes. 7801

Q. Or principally some of the sizes which, for instance, you might have a shortage in? A. All sizes.

Q. And you have to pay the regular circular prices? A. Yes.

Q. Full circular prices? A. As far as I know.

Q. Just the same as any wholesale dealer would pay? A. I assume so. I don't know what anybody else bought for; I do know what I pay.

By Mr. Boles: 7802

Q. What is the natural market for the distribution of coal which originates at points on the Lehigh Valley Railroad?

Mr. Machen: Objected to for indefiniteness and as a matter of opinion.

Q. What is your answer? A. Let me ask you a question again, please. The natural market, did you say, for the Lehigh Valley?

Q. The natural market for the distribution of the coal which originates on the Lehigh Valley Railroad? A. I should say the locations on the Lehigh Valley Railroad. 7803

Q. How long have you been familiar with the matters connected with mining of coal? A. Indirectly I should say for forty years; my father was a member of George B. Newton & Company and in that way I had it indirectly; shortly after I left college I went with George B. Newton & Company.

Q. In your opinion is the gathering of coal at the mines by the railroad in the nature of a natural monopoly? 7804

Mr. Machen: Objected to as a matter of opinion and a question of law.

A. I am not familiar with what you mean by gathering coal at the mines.

Q. The gathering from the breakers by the Railroad, is that by reason of the construction of the breakers and the geographical features around the mining region;

7805 is that operation in the nature of a natural monopoly? A. Even yet I do not understand what you mean by gathering coal at the breaker.

Q. The collection of the cars after they have been loaded from the chutes at the breakers? A. They have to be taken out in trainloads to go over the scales; I don't see that there is any other way to handle it.

Q. In other words, the advantageous way in your opinion is for one railroad to do that work? A. It is the only possible way.

7806 Q. Would there be any advantage in having two railroads taking the cars from the same breaker?

Mr. Machen: Objected to for the same reasons as stated heretofore.

A. It would not be possible, Mr. Boles.

By Mr. Gordon:

Q. Mr. Hill, don't you know collieries which are served by more than one railroad? A. Not on the same switch.

7807 Q. Is there anything impossible in two railroads sending their cars to collect coal at the same breaker? A. Nothing to prevent their sending an airship.

Q. As a matter of fact, isn't it the situation in many collieries in the anthracite coal region that the same colliery is served by more than one railroad? A. I said not on the same switch. One railroad will perform the service for the others for part of the switching charge, which I am not familiar with. But you can readily see yourself if you are familiar with it how impracticable it would be to have different sets of engines going under

7808 a breaker to take out specific cars belonging to such a railroad.

Q. Isn't it possible to have a track which passes under the colliery connected with more than one railway? A. Certainly.

Q. And under those circumstances could not the cars from either railroad go on that track? A. Unquestionably, but you asked whether the different railroads would serve their cars under that breaker. They could

do it, there is no question about their ability; it is im- 7809
practicable.

Q. Why? A. For the reason I have just given. That if you had various switching engines from different railroads pulling out their cars from another breaker the congestion resulting would be so great that you would not be able even to load the cars, and the railroad would not be able to perform the service for which they are charging. Are you familiar with a breaker? May I ask a question?

Q. No, I am not familiar; I wish you to tell me? A. I 7810
think the easiest way to do would be to familiarize yourself with it and avoid that kind of a question.

Mr. Machen: Describe a breaker.

The Witness: I will get you a picture of it.

Q. Describe it so that it will appear on the record? A. I don't think that is a necessary question for me to describe a coal breaker. I am asked to come and testify as I understand, whether this is a monopoly, and not a coal breaker. 7811

Mr. Boles: I am perfectly willing to have you do so if you do not object. I think it would be a good thing for the Court to understand the nature of these breakers and the nature of this impracticable service which you have spoken of.

A. These various bins in a breaker are of various sizes—holds the various sizes that are produced. The car which is on the light track, that is, where the empty car is, is put under the breaker on this particular switch, 7812
and that car is loaded with the bin coal or with the coal that is in the bin. As soon as it is filled then that is put back on the loaded tracks. When a sufficient number of those empty cars are on the loaded tracks with coal, they are pulled out either with ten or twelve, depending on the size of the breaker, and the shift is made once or twice a day, as the tracks become loaded with the cars. Now, it can be readily appreciated with one track under the breaker, on account of the location of

7813 the chutes how impossible it would be to have more than one car on the track occupying the same space at the same time, and if these various shifts of single cars, that is, an engine going in to pull a loaded car out, the car that they wanted might be at the extreme end of the track, whereas, the Reading engine, we will say, to make it specific, was here to pull out this Lehigh Valley car, which was the first one loaded, requiring the drilling say of eight or ten cars to get the specific car which they were after, and the result would be a congestion, a
7814 delay in the loadings, a delay in the railroad, the possibility of error and the switching of the car on the proper tracks, after the cars were pulled out by the engine. It would seem to me that if you became familiar with this it would be more graphic by inspection, than for me to appear and tell you about something of which you don't know anything, and in such a general way.

Mr. Warren: Is there space under the chute for two tracks to be and practically to dump the coal out of the bin?

7815 The Witness: In the average breaker, no.

Mr. Machen: Aren't there a number of collieries in the anthracite fields the owners of which own their own tracks into the breakers?

The Witness: We don't. I don't know what others do.

By Mr. Gordon:

Q. Are you familiar with the breaker of the Plymouth Coal Company? A. Not under that name. I know of
7816 it. I don't know the details of it.

Q. Don't you know as a matter of fact that that company ships coal from the Black Diamond colliery over the Lehigh Valley, and also the D. L. & W. and the Delaware & Hudson and the Pennsylvania? A. I will know it if you tell me.

Mr. Boles: Take for example the Kingston. Now reconcile the fact that the Kingston has several railroad connections with what you have stated about the impracticability of it?

The Witness: I don't know the Kingston particularly; I know how it is ordinarily handled where one railroad performs the service, charging the switching charge to the railroad that does the haul; but there is only one railroad that does perform the service for the switching of cars into the breaker. That is a matter of agreement with the railroads and prorated as they do with any other prorate. 7817

By Mr. Machen: 7818

Q. And each of the other railroads stands on an absolute equality so far as the breaker is concerned?

Mr. Warren: I object to that as a matter of opinion and is, therefore, improper and as a conclusion of law too.

Q. (Question read.) A. I don't know what you mean.

Q. Each company has the same access to the breaker as all of the others? A. I should assume that they had; I don't know. 7819

Q. That switching service could be performed by one railroad for all of the others, or could be performed by the owner of the colliery if he had the locomotives to do it with, couldn't he? A. I should assume so.

Q. Don't you know as a matter of fact that it is performed in some cases by the owners of collieries? A. I don't know. I should think it was not.

William T. Grier, recalled on behalf of the Lehigh Valley Coal Sales Company. 7820

Direct Examination by Mr. Warren:

Q. Mr. Grier, do you recall the making of a tariff by you for the Lehigh Valley Railroad Company as to minimum carload weight and the objection made thereto by the Sales Company? A. Yes.

Q. Did you allow their demand in connection with the minimum carload weight matter? A. No, sir.

7821 Q. And you never have conceded it? A. No, sir.

Q. Did they insist upon some rearrangement of that tariff which you did not accede to? A. They insisted upon the cancellation of the tariff and restoration of the old conditions.

Q. You did not agree to it? A. Did not do it.

Q. And have not to this moment? A. No, sir.

Q. And do not propose to, I suppose? A. No.

Q. Now, Mr. Grier, the Government has asked some questions with reference to Lehigh Valley Coal Sales
7822 Company Exhibit No. 42, which disclosed that there are rates by various railroads other than the Lehigh Valley Railroad from collieries to certain places named in this exhibit, which appear to be the location of premises of certain lessees of the Lehigh Valley Railroad Company appearing if I understand it correctly upon pages 52 to 55 of the Government's petition, to which I ask your attention just for a moment; I don't know whether you are familiar with it; just glance at that list please. Now, take a concrete case, that of Cuddy & Geherin at Auburn, New York, if they desired to purchase coal from collieries
7823 on the lines of the Philadelphia & Reading, or the Erie, or the Delaware, Lackawanna & Western, or the Pennsylvania Railroad, or New York, Ontario & Western, the companies named in the second column from the right on page two of this exhibit as being collieries to which the exhibit states there are rates in effect from collieries on those lines to those places—that is, to that place I should have said—Auburn, will you tell us what difficulty if any, Cuddy & Geherin would have to get the coal routed by those various roads to Auburn into their yard or
7824 trestle or whatever their coal position was? A. None whatever.

Q. Will you state whether or not the Lehigh Valley Railroad Company have a regularly published tariff covering switching charges for services of that kind? A. Yes, we have.

Q. Does that tariff cover the point at Auburn? A. Yes.

Q. How many places?

Mr. Machen: I object to questions as to the contents of the tariff unless the tariff is produced, the tariff being the best evidence of what it contains. 7825

Q. In how many of the places appearing on the Sales Company exhibit No. 42 are there such tariffs covering such switching charges? A. Do you want them specified, or simply the number?

Q. Just tell me how many there are upon it and perhaps you can say the others there are? A. About thirty-five where there are no switching arrangements, many are entirely local points on the Lehigh Valley Railroad that are not reached by any other railroad and, therefore, there could not be any switching arrangement. 7826

Q. Is this the tariff to which you refer and a copy of that which you publish? (Showing witness paper). A. Yes.

Q. And does it designate the names of the stations where your switching charges are to be enforced or to be applicable? A. Yes.

7827

Mr. Warren: I offer this tariff in evidence.

Marked **Lehigh Valley Coal Sales Company Exhibit No. 48.**

Q. How close, if you know, to the Lehigh Valley Railroad Line is the Central Railroad of New Jersey tracks going through Allentown, Pennsylvania? A. In many places it is within a stone's throw.

Q. Do you know the location in Allentown of the premises the tenants of which appear upon the first page of Sales Company Exhibit No. 42 and on a part of the second page, and how far away they are from the Central Railroad of New Jersey tracks? A. Two of them here, the Gordon Street trestle and Union Street trestle; I should say a couple of hundred yards from the Central Railroad tracks; as to the others I don't know. I don't know where they are located. 7828

Q. Are there switches connecting tracks of the Central and the Lehigh Valley at Allentown? A. Yes.

7829 Q. They interchange merchandise and other freight? Yes.

Q. That is the common practice, is it not, as between all railroads at points of any moment where they both reach? A. They have connections?

Q. Yes? A. Yes, that is the common practice.

Cross-Examination by Mr. Machen:

Q. This tariff, I. C. C. D.-664 which has been offered in evidence marked Lehigh Valley Coal Sales Company
7830 exhibit No. 48, relates to switching from other railroads to points on the Lehigh Valley Railroad? A. To deliveries on Lehigh Valley Railroad.

Q. Within the switching limits? A. Yes.

Q. Now, as I understand it, the Lehigh Valley Railroad exacts for those services a rate of thirty cents a ton at the points named in this tariff on anthracite coal of all grades and on anthracite briquettes and boulets? A. Yes.

Q. If I read the tariff aright there is no switching
7831 tariff in effect at Perth Amboy on anthracite coal, is that correct? A. That is correct, yes.

Q. Is this the only switching tariff in effect on the Lehigh Valley Railroad? A. On anthracite coal?

Q. Yes. A. Unless there is some other specific reference to Perth Amboy; there may be another tariff at Perth Amboy.

Q. Look at it and see? A. (After examination.) Probably there is another switching tariff on coke.

Q. Then, in order that a dealer situated on the lines of the Lehigh Valley Railroad at Auburn, we will say
7832 for example, Cuddy & Geherin, should get his coal from a colliery on some other road other than the Lehigh Valley Railroad, for example, the Erie or the Delaware, Lackawanna & Western, it would be necessary for him to pay the Delaware, Lackawanna & Western freight rate and also the Lehigh Valley switching charge, would it? A. No, sir.

Q. Why not? A. The New York Central & Hudson River Railroad have a tariff which authorizes the absorption of our switching charge.

Q. I am asking you about the Erie? A. That Company 7833
reaches Auburn in connection with the New York Central.

Q. I misunderstood this exhibit then. The only railroad other than the Lehigh Valley reaching Auburn is the New York Centaral, is it? A. New York Central & Hudson River Railroad, and the New York, Auburn and Lansing Railroad which runs from Auburn to Ithaca.

Q. And are there joint rates in effect from, for example, collieries on the Delaware, Lackawanna & Western via that road and the New York Central to 7834
Auburn? A. I understand there are, yes.

Q. That is a matter, though, of which you have no direct knowledge? Those tariffs are on file in your office, are they? A. More than likely it is. We endeavor to keep a full supply of tariffs of all roads so as to keep watch on them.

Q. Am I correct in saying that none of these stations shown on tariff I. C. C. D-664 offered in evidence as Coal Sales Company Exhibit No. 48 are situated between the anthracite coal mines and tide-water, all of them in other words, are north or west of the mines? A. No; 7835
Phillipsburg is there, is it not?

Q. I don't see it. A. Phillipsburg, New Jersey.

Q. Look at it and see? A. (After examination.) No, there is no other point east.

Q. Suppose a dealer at a point between the mines and tide-water situated on the line of the Lehigh Valley Railroad desired to get his coal from a colliery situated on some other road, could he and if so in what way could he get it? A. About the only railroad would be the Central Railroad of New Jersey and they parallel 7836
us along the river, and if the transportation rate is fairly sufficiently high to justify the Central Railroad of New Jersey in absorbing the switching charge they would under arrangement with us absorb the switching charge. But you take a case, for instance, like Allentown where the steam size coal rate is 60 cents say; if you wanted to deliver on the Central Railroad we could not afford to absorb 30 cents a ton to make that delivery and vice-versa.

7837 Q. And you would not do it? A. We would not absorb 30 cents out of a 60 cent rate.

Q. So that there would be no way by which the dealer at Newark, for example, could get his coal from the colliery if he was situated on the line of the Lehigh Valley from a colliery situated on some road except by hauling it by steam from the delivery point on the other railroad to his yard on the Lehigh Valley? A. Or else to arrange for a joint rate between the two roads.

Q. I am speaking of the rates in effect now. A. As
7838 they are now there is no way to do it unless he would be willing to pay what we call our mileage rate, which is applicable where there is no switching rate.

Q. Do you know what the mileage rate is? A. The mileage rate would be 60 cents.

Q. A ton? A. A ton.

Q. On all sizes? A. On all sizes.

Q. That is, of course, anthracite coal we are speaking about? A. Yes.

Mr. Warren: You mean 60 cents a mile?

7839 The Witness: 60 cents per ton for the switching charge; that is a mileage rate that is applied when there is no regular tariff issued to cover the movement. We must have a tariff that covers emergency cases but that tariff is applied in extremely rare cases; in fact, I don't think there is more than probably three or four a year, and then when the matter is gone over by the other railroad and ourselves and there is a large movement contemplated the discussion of the joint rate would come up.

7840 Q. Mr. Grier, referring to the Lehigh Valley Railroad Company Exhibit No. 79 upon which by agreement of counsel I am at liberty to examine you to-day, I call your attention to page four entitled "Lehigh Valley Railroad Company rates on anthracite coal to Perth Amboy for reshipment per gross ton," showing a rate of $2.50 effective June 7, 1875, and various other rates from that time down. Now, it is a fact, is it not, that those rates were not the rates that were actually charged except

for the period since 1900, but that up to that time a per- 7841
centage rate was in force and actually collected? A. I do not understand at that period, Mr. Machen, that they applied the percentage rates.

Q. During the whole of that period? A. No, I mean 1872. I understand that those rates as given there were collected.

Q. During the later years of that period, during the years from 1893 onward, the percentage rates certainly were enforced, weren't they? A. They were enforced up until October, 1900, on the Lehigh Valley Railroad, the 7842
actual percentage rates are in there, I think.

Q. But the rates actually collected were the percentage rates from 1893 to 1900, weren't they? A. Percentage rates, yes.

Q. And not the rates shown on Exhibit No. 75? A. Not the tariff rates, no.

Q. The portion of your history relating to explanation of lateral rates is antiquarian merely, isn't it; I mean to say those are not any longer in vogue? A. No, those are no longer in vogue.

Q. The reason I asked this question was that you used 7843
the present tense in these papers. For example "The rates *are* all arbitrary"; you mean by that to use the historical present, I suppose? A. Yes, as though I was writing then.

Q. On page 16 of your history it is stated that the present rate from all mines on the Lehigh Valley Railroad to Buffalo and New York are $2.00 per gross ton on prepared sizes, $1.75 per gross ton on pea and smaller; now, by all mines on the Lehigh Valley Railroad do you mean to include the Bernice mines? A. Doesn't it men- 7844
tion the Lehigh and Wyoming region?

Q. It says from all mines on the Lehigh Valley Railroad. A. That history deals entirely with the rate situation so far as the collieries and washeries, located in the Wyoming and Lehigh and Schuylkill regions are concerned.

Q. Will you please explain what is meant by the lateral charge? A. A lateral charge has about ten or twelve different definitions.

7845 Q. Yes, but what is commonly meant by it in reference to shipments of anthracite coal from the Pennsylvania mines? A. A lateral charge is supposed to represent the gathering and assembling of coal and getting it to a connecting line or moving it out to a main line.

Q. It is a charge for hauling the coal from mines to the assembling point or the connection with the main line of the railroad? A. It depends upon the particular situation. In some cases, for instance, if we delivered coal to the Pennsylvania Railroad at Tomhicken they
7846 might designate our charge from the mines to Tomhicken as a lateral; then again there are cases in the division of rates where the originating road is allowed a lateral charge from the mine to a main line point and from that main line point a division with the connecting line is made on a pro rata basis.

By Mr. Warren:

Q. Mr. Grier, do you recall Mr. R. S. White of the Sales Company coming to your office and giving him
7847 access to the published tariffs of various railroads so he might look them over the other day? A. My chief clerk reported to me that he came there and he gave him access to our entire files of foreign tariffs.

Q. When you say foreign tariffs you mean tariffs of other railroads? A. Yes.

Q. Do you know whether the tariffs furnished to him and in your files are those current tariffs in force now? A. Yes, we believe they are.

By Mr. Boles:

7848 Q. What other railroads were charging percentage rates during the time that the Lehigh Valley charged it? A. My understanding is that they were all doing it.

Q. I think Mr. Large said the Pennsylvania did not do it? A. The Pennsylvania did it. Mr. Large said on the stand, the Pennsylvania rate of $1.40 was the outcome of the percentage rate of the previous year.

Q. And all of the other carriers that carried coal from the anthracite region to Tidewater were collecting percentage rates during the same period? A. Yes.

By Mr. Machen: 7849

Q. Now, you said that percentage rates were applied on the Reading and the Jersey Central, or one or the other of them? A. I don't know as a matter of fact, but that was my understanding. I understand that the percentage rates were in effect on all the roads to Tidewater.

Q. You would not be positive about that? A. I am as positive as I could be about a thing without having direct and immediate knowledge of it.

By Mr. Boles: 7850

Q. Will you give the names of the ten largest shippers of anthracite on the Lehigh Valley Railroad during the last year? A. Lehigh Valley Coal Sales Company, G. B. Markle & Company, Weston, Dodson & Company, J. S. Wentz & Company, Hazel Mountain Coal Company, The Mill Creek Coal Company, Midvalley Coal Company, Plymouth Coal Company, Thorne, Neale & Company, and F. A. Potts & Company.

Q. And what proportion of the total tonnage did they ship? A. About 95 per cent. 7851

Q. The Hazel Mountain Coal Company is a concern of which Mr. McTurk sells the output? A. Yes.

Q. And who sells the output of the Midvalley Coal Company? A. J. S. Wentz & Company.

George N. Wilson, recalled.

Direct Examination by Mr. Warren: 7852

Q. Did you suggest and get up this device to which I called your attention at the adjournment, appearing on your letterhead in Government Exhibit No. 59? A. I did.

Q. What did you do it for; what is the purpose of it? A. As a distinctive device, something to call attention on the stationery and on circulars, literature and advertising.

7853 Q. If such a thing as that has been continued long enough, is it assumed to have some effect by way of being a sort of asset or good will or something? A. Yes, in the nature of trade marks in general.

Cross-Examination by Mr. Machen:

Q. Mr. Wilson, you were, I believe, one of the incorporators of the Lehigh Valley Coal Sales Company, were you not? A. Yes.

Q. How many shares of stock did you subscribe for?
7854 A. One.

Q. How many do you now hold? A. Two.

Q. Do you hold any stock in the railroad company? A. No.

Q. Have you ever done so? A. No.

Q. When you resigned your office in the Lehigh Valley Railroad Company and went to the Coal Sales Company, was the change accompanied by any increase in salary, or did you receive from the Sales Company the same salary that you received from the Railroad Company?
7855 A. I received a greater salary from the Sales Company than I had been receiving from the Railroad Company.

Q. Did you include in the salary which you received from the Railroad Company any salary you may have received from other corporations controlled by or affiliated with the Railroad Company? A. I received no other.

Q. Your entire salary was paid by the Lehigh Valley Railroad Company? A. Yes.

Q. Mr. Skeele was also one of the incorporators of the
7856 Lehigh Valley Coal Sales Company, wasn't he? A. He was.

Q. Do you know how many shares he subscribed for? A. One.

Q. Do you know how many shares of stock he held up to the time of his death? A. I do not.

Q. Do you know whether the Mabelle C. Skeele, who appears on the list of the Lehigh Valley Coal Sales Company's stockholders, which has been offered in evidence, as the holder of one share of stock in that company on April 9th, 1914, and who resides at 19 Crescent Road,

Madison, New Jersey, is the widow of Mr. Skeele, for- 7857
merly President of the Coal Sales Company? A. She is, to the best of my knowledge and belief.

Q. Do the two shares of stock which you hold in the Lehigh Valley Coal Sales Company belong to you beneficially or have they been transferred to your name merely for the purpose of qualifying you as an officer or director? A. I bought them.

Q. They belong to you beneficially? A. Yes, personally.

Q. And you hold the certificates in your possession? A. Yes.

7858

Q. Who was present at the conferences which you have testified to which preceded the formation of the Lehigh Valley Coal Sales Company, and attended the negotiations of the contract between that corporation and the Lehigh Valley Coal Company? A. Mr. Skeele and myself for the Sales Company, Mr. Warriner, sometimes Mr. Chase and Judge Wheaton for the Coal Company, and sometimes Mr. Smith of the Coal Company. There were a number of conferences, not always participated in by exactly the same people.

Q. And you stated that these conferences began about 7859
December, 1911? A. I think I said about the early part of January.

Q. What was the date of incorporation of the company? A. January 22nd, I think it is.

Q. It was prior to that time, was it, that the conferences began, prior to the incorporation? A. The general conferences. I don't know when the conferences specifically as to the contracts began.

Q. When did the conferences begin relating to the particular terms of the contract? A. I cannot say ex- 7860
actly, but I should say certainly by the middle of January.

Q. Do you remember when the contract assumed something like its final form—I suppose there were many minor details? A. A great many, yes, and its final form was shortly prior to its execution.

Q. It was executed on the date it became effective, was it? A. I don't know whether it was dated February 29th—dated March 1st, I think the exhibit shows. That is the date the contract had, March 1st.

7861 Q. Were the terms of this contract substantially as they finally appeared settled upon prior to the offer of the stock to the shareholders in the Lehigh Valley Railroad for subscription?

Mr. Warren: The date of which was January 19, 1912.

A. The final terms were not ready at that time.

Q. How much had been settled upon at that time? A. I could not say as to that. As I say, there were a num-
7862 ber of drafts of this contract, and modified as the conferences proceeded.

Q. At what time did you resign your office as Auditor of the Lehigh Valley Railroad Company? A. My duties there virtually ceased about the 1st of January.

Q. Virtually ceased? A. Yes. I took no part in the direction of my office as General Auditor while I was engaged in these conferences in January and February.

Q. Did you cease drawing your salary from the Lehigh Valley Railroad Company at that time? A. I did not.

7863 Q. How long did your salary continue? A. Until the end of February.

Q. At the time of these conferences no stock in the Coal Sales Company was issued other than the shares subscribed for by the incorporators, isn't that so? A. That is true.

Q. The incorporators at that time composed the corporation, and were the only persons who had any interest in it, is that correct? A. The only stockholders, the only subscribers.

7864 Q. When did you say you determined, upon March 1st as the date when the new arrangement should go into effect? A. At about the time the articles of incorporation were filed. It was in January; it was recorded January 22nd.

Q. You had then determined to offer the new stock for subscription to the stockholders of the Railroad Company and determined definitely to carry out the general plan or scheme before you had settled upon the terms of the contract? A. Before the final terms as shown in this contract had been all agreed upon.

Q. And you had, in fact, before you had determined upon the terms of the contract, or in fact before there was any real existence of the corporation, you had offered the stock for subscription to the Lehigh Valley Railroad stockholders? A. Oh, yes, because that had to be to get the capital prior to the date the company commenced business; it was necessary, of course, to get that, or be sure we had the capital, before we could start business on March 1st. 7865

Q. You did not wait to find out how many stockholders would subscribe before you went ahead with the incorporation? A. An arrangement had been made with Drexel & Company to be sure that on March 1st we would have the capital. 7866

Q. Yes, but all I want to get at definitely was that before the contract was executed, or even before it was agreed upon at these conferences, you had actually offered this stock for subscription to the Lehigh Valley stockholders? A. Yes, it had been offered them under the terms of the circular which has been offered in evidence.

Q. At any rate, it had been definitely determined upon that the transfer should take place on March 1st? A. Yes, it had been definitely determined upon that the Coal Company would cease merchandising coal, and sell its coal at the mines, and that the Sales Company to be formed would purchase that coal, and the agreement had covered the main issues; the details had not all been completed. 7867

Q. I think you said or intimated on direct examination that it is difficult to sell a large business as a going concern; in other words, that you have to take less for the coal than could be realized from the sale of coal at retail, or even at the ordinary wholesale marketing? A. I took care of what? 7868

Q. That you took less for the coal when sold *en bloc* than you would have had to take for it if it had been sold at retail, or even in the ordinary way at wholesale to dealers? A. I don't think I testified to that.

Q. Then I misunderstood you; straighten it out? A. What I meant to convey, if I understand what you refer to, was that to begin business on such a large scale,

7869 to take over a large stock of coal and take over accounts and carry on such a large business, was a large undertaking, and that it could not be, or would not be practical for a company to peddle this out, part of it to this concern, and part to another, and part to another, and be sure of having purchasers for all of its coal in stock and to be mined currently.

Q. Isn't it the truth that it would be very difficult for a corporation starting out with whatever capital you might select, or however great the capital might be, it
7870 would be very difficult for any new corporation to acquire such a large stock of coal as the Lehigh Valley Coal Sales Company started out with? A. I don't see why if they had plenty of capital they could not buy a stock of coal.

Q. If they did do so, they would have to pay very high prices, pay very high prices in order to get it? A. I did not understand that; I do not see why they would have to pay very high prices.

Q. Do you mean to say that any person could go out in the market and buy the large quantity of coal which the Lehigh Valley Coal Company sold to the Lehigh Val-
7871 ley Coal Sales Company without causing an increase in the price of coal in the market? A. Taking a supposititious case of that, I should say they could not; nobody could go out to-day and accumulate at once in 24 hours a large stock of coal without putting up the price.

Q. In other words, if an entirely independent enterprise in the nature of a company for dealing in coal had been organized without any connection, historical or otherwise, with a large company, like the Lehigh Valley Coal Company, it would not have been possible for the
7872 new company to buy coal at the April price, the ruling April price, the low price, in such a large block, as would be necessary to start the business? A. That would all depend. If there was somebody who wanted to sell a whole lot of coal they would.

Q. It required the two, the two had to get together, didn't they? A. Yes.

Q. And it would be necessary for the purchaser to find a vendor who was anxious to sell *en bloc*, otherwise the purchaser could not get the coal, is that so? A. As I

understand you, if somebody started out to accumulate a 7873
million tons of coal very suddenly, it would probably put up the price some if they did it?

Q. Yes. A. On the other hand, if somebody had a million tons of coal they wanted to sell probably it would have the other effect.

Q. You said that the storage coal was taken over by the Lehigh Valley Coal Sales Company at practically the value which it bore on the books of the Lehigh Valley Coal Company, is that correct? A. That is the way it worked out. 7874

Q. Do you know how that book value was arrived at? A. Why, as it stood on the books of the Coal Company.

Q. I mean to say, for example, that suppose the Coal Company had purchased some of that coal under the 65 per cent. contracts, and paid for it 65 per cent. of the general average tidewater price, and then had transported that coal to Buffalo, for example, to Wende, would the book value of that coal be the price which the Lehigh Valley Coal Company had paid for it plus the cost of transportation to Buffalo? A. I assume it would. 7875

Q. Now, you don't mean to say that was the price you paid? A. I say, taking all together, we paid close to the net book value of the Lehigh Valley Coal Company's stock.

Q. Now, you went on to say that that was the price which you paid? A. I was taking it all together. We paid close to the net book value of the Lehigh Valley Coal Company's stock.

Q. In respect to the coal mined by the Lehigh Valley Coal Company, can you tell me how the book value would be made up? A. Why, I have to assume there again, 7876
that in the ordinary course of business it would be what it cost them to mine it and put it at these various places.

Q. But in both cases you are assuming, you don't know? A. I don't know just exactly what the Lehigh Valley Coal Company did, although I did at the time.

Q. You did not look into it? A. But I do know that that had been its method when I was general auditor.

Q. Which was about three years prior to this time? A. Yes.

7877 Q. Prior to 1912? A. That would be the ordinary course of business in any business. The book value of a stock of goods, wherever it may be, carried by a concern or manufactured or produced.

Q. Was the amount which the Coal Sales Company paid for the stored coal ascertained by an inventory of the coal on storage at any place? A. There were some measurements made. Coal has to be estimated. It is in piles of all sorts of sizes and shapes and to take any sort of an inventory requires a measurement and an es-
7878 timate; that is as near as a pile of coal can be computed in advance, and there were some measurements made.

Q. And from those measurements or estimates or calculations the amount was determined upon which the Coal Sales Company should actually pay, the rate or scale having been fixed by the contract? A. Previous to this the tonnage at each point is stated in these exhibits which have been offered, and applying the prices made in the contract, arriving at the amount which you say was the amount paid over by the Sales Company for the stock coal.

7879 Q. Yes. In other words, after the contract was executed, or at or about the time of the execution of the contract, an estimate was made of the amount of coal on storage at each of these points on March 1st, of the various grades, and the amount which the Coal Sales Company was to pay was fixed by that estimate, is that correct? A. Not by the estimate. These estimates or measurements were to determine whether there were any very large discrepancies apparent between the stock of coal at a given point and what these measurements
7880 would indicate was the approximate amount actually there, and adjustments where there were discrepancies, were made, judging that way, and bringing the book value as near the actual conditions as could be.

Mr. Warren: Did not the books have the tonnage as well as the value?

The Witness: Certainly.

Q. The books of the Lehigh Valley Coal Company showed the amount of coal of the various sizes which

ought to be on storage? A. The tonnage, and the book 7881
value of the same.

Q. Yes, the various sizes? A. Yes.

Q. That was based upon shipments, was it, or was it based upon reports made from the storage plants at the time the coal was received? A. Reports were made on the coal received, less the coal shipped out. It fluctuates from day to day at every point.

Q. The books showed the amount which ought to be on hand at the various storage points based upon reports as to the amount of coal received at those points, less the 7882
amounts shipped out? A. Yes, that is it.

Q. Then describe again what steps you took to check up this book tonnage? A. Simply that, as I said, there were measurements made from which were computed the tonnage which those various piles realized.

Q. And if, for example, you found that there was a smaller amount of coal of any particular size, or a much smaller amount than the book tonnage indicated, then the amount which the Coal Sales Company should pay was adjusted accordingly? A. There were adjust-
ments made. I am speaking of these now as things done 7883
by the Coal Company, you understand, because this was done before the Coal Sales Company began operations on March 1st, the object being to bring it all down as near as might be to the book value and actual conditions.

Q. The written contract which is in evidence provides that the Coal Sales Company should pay the Coal Company for prepared sizes, as set forth, at points west and north of Buffalo, the sum of $5.75 per gross ton. Now, I understand you to say that you did not simply take the coal company's books for it to show that there was, say, 7884
a thousand tons of prepared coal on storage at any particular point, but you actually checked that up and ascertained the exact amount, so far as you could do so, the exact amount of such coal on storage at each point? A. No, we did not do that. We took over—the Coal Company, as I said, made some measurements and adjusted their books, as I understand, and we took over their business as of March 1st, took over the people that were in charge of those stocks of coal, and they began

7885 there. The first report of the Sales Company was that we had on hand so much of this and that and the other size, which was the same as the end of the report of the Coal Company of the night before.

Q. Yes, but that report had been made up not merely from the previous records of the Coal Company, but from an actual examination, in the nature at any rate of an inventory? A. At some points. To what extent I don't remember. Nor how many places.

Q. Now, isn't it true that if a hundred tons of pre-
7886 pared coal, say, had been shipped by the Coal Company from the mines to some storage point and left there for a while, and then the stock of coal was taken over by you, the Coal Company had paid the freight upon that shipment from the mines to the storage point, upon the assumption that it was all prepared sizes, no diminution having been made for degradation, isn't that correct? A. That is the way it goes. You haven't finished, as I understand you?

Mr. Machen: Read the question.

7887 Q. (Question read.) A. That is correct, they would have paid the freight on the coal as it was shipped from the mines.

Q. Then suppose after you took over this stock it became necessary to forward this coal to some dealer, and suppose then it appeared that, say, two tons of the coal had degraded from the prepared sizes to buckwheat, upon those two tons you would only be called upon to pay the difference between the tariff from the mines to the ultimate destination on the degraded size, isn't that
7888 so, and the tariff? A. That did not enter into it at all. The coal was at the various stocking points. The degradation, of course, is inevitable, and the freight has been paid on it as a prepared size, and whether we can realize from that two tons of degraded coal as much as the freight that has been paid upon it, all depends upon the size of the coal, the location of the market and whether you could get that much for it or not. It was just a question that there was so much small coal dust and screenings, and you sell it for what you can get.

Q. I understand, but if you shipped that out as buck- 7889
wheat coal or screenings, or whatever it was you shipped out, you would not pay the freight on it as a prepared size when you shipped it out as buckwheat, would you? A. If it was buckwheat when it started from the mines we paid the buckwheat rate.

Q. Suppose it was prepared sizes when it left the mines, and buckwheat when it reached storage? A. We have to pay the rate the same as the prepared rate, and stand the difference.

Q. From the mines to storage point? A. Yes. 7890

Q. But not from the storage point to destination, because there is no way of telling, for one thing, is there? A. I don't get you, from storage to destination. These two tons of degraded coal would be practically like a new product that originated at this storage point.

Q. Yes. A. We had paid the prepared rate of freight to get it there.

Q. Yes. A. Now, we must take what we can get and suffer the loss of the difference between, as you put it, the rate on prepared coal and the rate on the buckwheat coal. 7891

Q. And the coal company had paid the rate on the prepared sizes up to the time of the incorporation of the Coal Sales Company, and the Coal Sales Company, in case the coal had degraded in the meantime, shipped it out at buckwheat rates, or whatever the rate, as steam sizes? A. If it was shipped, for instance, from Chicago to Aurora, whatever the rate would be on Buckwheat coal would be paid. It did not make any difference about the rate back east of Chicago. In other words, there was no adjustment of rates. 7892

Q. Of course you would not repay anything to the Coal Company, but what I am getting at is, did you pay that freight charge established on the degraded size? A. Certainly.

Q. You would pay freight on the degraded size as a new product? A. Whatever the commodity was when it moved from the storage plant.

Q. Yes. A. Yes.

7893 Q. Now, in reference to the supposed obligation of the Lehigh Valley Coal Sales Company to carry on the business of the Coal Company in unprofitable markets, that is, unprofitable for the time being for the purpose of building up the business, the only contract upon this subject was the written contract dated March 1st, was it?

Mr. Warren: I object to the question as being improper and incompetent.

A. Yes.

7894 Q. Referring to page 35 of the petition, and it is a fact, is it not, that the Lehigh Valley Coal Sales Company now purchases and markets the coal produced by the various operators there mentioned, or at least from the mines of the various operators there mentioned? A. No.

Q. The Lehigh Valley Coal Sales Company purchases, does it not, the coal mined from the mines of the Austin Coal Company? A. It does not.

Q. Hasn't the Austin Coal Company been absorbed into
7895 the Lehigh Valley Coal Company? A. I don't know.

Q. You only mean that it has not—— A. (Interrupting.) That I have no dealings with the Austin Coal Company.

Q. You have no dealings with the Austin Coal Company? A. Yes.

Q. But you buy the products of the mines of the Austin Coal Company, don't you, or do you know? A. I don't know.

Q. You don't know? A. No.

Q. I think you said that after the annullment of the
7896 65 per cent. contracts by decree of the District Court of the Eastern District of Pennsylvania you entered into a direct contract with certain of the concerns with whom the Lehigh Valley Coal Company had had these contracts; as for example, A. Pardee & Company and the Raub Coal Company, for the purchase of their output? A. They came to me and asked if we could not arrange plans by which we could continue to market their products.

Q. Yes. Prior to that time you had purchased their coal as assignees of the Lehigh Valley Coal Company,

had you not? A. Not as assignees, as I understand it. 7897
There was no assignment. We purchased that coal at the mines, as provided in the contract, in Exhibit 3.

Q. Between yourselves and the Lehigh Valley Coal Company? A. Yes.

Q. After those contracts were annulled you bought the coal of some, at least, of the persons with whom the Lehigh Valley Coal Company had had these contracts? A. Yes, those I named this morning.

Q. You did that, did you, without any objection from the Lehigh Valley Coal Company? A. Yes, without ob- 7898
jection from the Lehigh Valley Coal Company.

Q. The Lehigh Valley Coal Company raised no objection? A. They had nothing to say about it.

Q. Did any one call your attention in that connection to the clause in the contract Exhibit 3, between the Coal Sales Company and the Coal Company, which I now read you, "So long as the mining company is ready or willing to deliver to Sales Company under this contract, Sales Company shall sell no other coal or fuels for itself or for any other persons outside of that which will 7899
require to be sold to comply with the terms of the existing hereinbefore recited sales agency and other sales contracts of mining company." Did any one call your attention in that connection, to that clause? A. No.

Q. And no claim was made upon you by the Coal Company that you were violating that clause? A. No.

Q. Did you buy any other coals than the coals purchased from the concerns mentioned this morning, namely, some of those set forth on page 35 of the petition? A. No.

Q. You don't buy any anthracite coal from any one 7900
else but from the Lehigh Valley Coal Company and persons or corporations with whom the Lehigh Valley Coal Company had had 65 per cent. contracts? A. No. Those purchases are shown in the answer, page 6.

Q. Well, you now purchase the coal of Pardee & Company, don't you? A. A. Pardee & Company, yes.

Q. That was handled on commission, but you now purchase it, don't you? A. It was at that time, it was handled on commission.

7901 Q. But that was only for a short time? A. Yes for several months.

Q. If the Coal Sales Company sells coal for delivery in New England, is it ever sold f. o. b. Perth Amboy at the Perth Amboy prices? A. Yes, sir.

Q. Isn't that quite common? A. Yes.

Q. Is it usual in case of shipments to New England? A. I don't remember the proportion. Some is sold f. o. b. Perth Amboy and a good deal along side.

Q. You mean alongside the—— A. (Interrupting.)
7902 The purchaser's dock in New England.

Q. Have you any idea how large a proportion of the coal of the Lehigh Valley Coal Sales Company is either sold in New York for local delivery or passes through New York Harbor as a gateway to New England or other points? A. No, I could not give a figure on that.

Q. You could not even approximate, could not even give us an approximate estimate on that could you? If you cannot give it with a reasonable degree of accuracy, it is useless to try? A. I should say about a million and
7903 a quarter tons.

Q. Did you ever apply to have the stock of the Lehigh Valley Coal Sales Company listed on New York Stock Exchange? A. No.

Q. Or on the Philadelphia Stock Exchange? A. No.

Q. Major Warren has called your attention to storage plants leased by the Lehigh Valley Coal Sales Company indirectly from the Lehigh Valley Railroad Company,—that is, leased by the Railroad Company to the Coal Company and sub-leased by the latter to the Coal Sales Company. I understood you to say that it was too expensive
7904 for a small shipper to maintain a storage plant of his own, is that so? A. That is my opinion.

Q. As a matter of fact, there isn't any independent shipper on the line of the Lehigh Valley Railroad which maintains a storage plant, is there? A. That is why I have that opinion.

Q. And there is no company, other than the Lehigh Valley Coal Sales Company or the Lehigh Valley Coal Company to whom the Lehigh Valley Railroad Company

has ever leased or ever offered to lease a completed storage plant, isn't that so? A. I don't know. 7905

Q. You were asked whether you knew of any discriminations in favor of the Lehigh Valley Coal Sales Company, and I thought perhaps you might have inquired into this matter? A. I do not consider that is any discrimination for or against.

Q. You did not have that in mind? A. Have what in mind?

Q. You did not have that kind of thing in mind when you said that you knew of no discriminations in favor of the Lehigh Valley Coal Sales Company? A. No, because I say I do not consider owning or leasing a property by anybody a discrimination. 7906

Q. You don't consider it a discrimination to lease to one shipper the only storage plant in existence along the line of the railroad? A. No.

Q. Of course you do not deny that it would be a considerable advantage to a small shipper to be able to store his coal free and transfer it later to the points of ultimate delivery? A. Certainly not. I should like to be able to store coal free too, but I cannot. 7907

Q. The Coal Sales Company at present enjoys the privilege, or the right, as the case may be, of shipping its coal from the collieries in Pennsylvania to its storage plants wherever located, and paying to the Railroad Company the rate from the colliery to the plant, of leaving the coal in the plant and subsequently reshipping to points of ultimate delivery, and paying to the Railroad Company merely the difference between the rate in effect from the colliery to the point of delivery and the amount previously paid from the colliery to the storage point, isn't that true? A. That is true, it has that privilege; it also has the obligation of maintaining and bearing all the expenses of those plants. 7908

Q. Yes. A. Which any other shipper is perfectly free to do if he will incur the expense of the investment.

Q. But you did not incur the expense of the investment, did you? You leased the plants completed? A. We incur the expense of maintenance and interest on the investment and taxes and the up-keep.

7909 Q. I am not disputing that? A. That is what we pay for this privilege.

Q. But you leased the plants as completed plants, merely agreeing to maintain them, isn't that so? A. Bear all expenses whatever connected with them, and turn them back in as good condition.

Q. As you got them? A. Yes.

Q. Do you know whether the Coal Sales Company has ever called upon the Coal Company to provide additional facilities under the terms of the fourth paragraph of the
7910 contract dated March 1st, in effect between the two corporations, a copy of which is in evidence as Exhibit No. 3? A. It has.

Q. Can you mention in what cases? A. An additional pocket capacity at Water Street Yard, Syracuse, and an improvement at Oswego.

Q. Are those the only two cases? A. Increasing the capacity at Irvington yard. I think those are all so far.

Q. Did the Coal Company comply with this request or demand? A. They did in those three instances. Irvington is under way. It has not been completed.

7911 Q. Have you any idea how much those expenditures cost? If you have to pay an increased rental on them, I suppose you have some idea? A. We do. Just what it is now I would have to look up. I can give that information definitely.

Q. Were you present when Mr. Markle testified the other day? A. I was not.

Q. If my memory serves me, Mr. Markle testified that it was his practice to notify the Coal Company and now the Coal Sales Company, of the prices which he would
7912 accept at the mines for his coal, and that then the Coal Company or the Coal Sales Company provided through their agency force the purchaser for the coal, and sent him an order to ship coal to such and such points, the order specifying the routing directions. Does that correspond with your recollection of the method of handling business between you two? A. It does.

Re-Direct Examination by Mr. Warren: 7913

Q. I understood you to say in answer to a question that Mr. Machen asked you, that no independent shipper on the line of the Lehigh Valley Railroad maintained a storage plant. I understood you to acquiesce in that. Did you mean to—— A. (Interrupting.) As I understand the purport of his question, that there is no such storage plant as those mentioned in Schedule A as Hudsondale, Ransom, South Plainfield, Wyoming, Calumet, Chicago Avenue, Canal Street or Superior.

Q. What did you understand he meant when he said 7914
independent shipper? Is there any more independent shipper than you are? A. I took that in the general parlance that has prevailed, meaning such shippers as Thorne, Neale & Company, Whitney & Kemmerer, and all those that Mr. Grier mentioned.

Q. Don't they buy, or some of them buy, from the Lehigh Valley Coal Sales Company? A. Yes.

Q. And you buy from the Lehigh Valley Coal Company? A. Yes.

Q. In what respect do they differ from you in the mat- 7915
ter of independence or dependence, either? A. None, in respect of independence.

Q. Well, perhaps I did not understand his question, but I would like to have you answer mine. Are you not an independent shipper on the line of the Lehigh Valley Railroad? A. Just as independent as anybody else.

Q. Now, counsel has asked you about storage plants, as if they were privileges. While it is true, as he says, that your company took over storage plants completed, and now in use by the Coal Company at the time you 7916
took over their tenancy of such plants, is there anything to prevent any other shipper on the line of the Lehigh Valley Railroad from constructing a storage plant such as the needs of his business require on lands of the railroad, if his tonnage is sufficient to justify such expenditure from his own selfish point of view?

Mr. Machen: I object to the question on the ground the witness is not shown to be acquainted with the Lehigh Valley Railroad Company or competent to answer the questions.

7917 Mr. Warren: In view of the objection of counsel I will amend the question.

Q. Assuming that Mr. Grier's testimony is reliable, which has been given in this case, and which is so far undisputed, that the Lehigh Valley Railroad will be very happy to furnish ground on its line to any shipper of anthracite for the construction of storage facilities, large or small, I will ask you on that assumption now, is there anything to prevent such construction?

7918 Mr. Machen: I object to asking this witness to testify upon the assumption of the truth of something supposed to have been testified by another witness.

Q. Answer my question? A. I know of nothing, and attempted to convey that in my previous answers.

Q. Coincident with the maintenance of such a plant, there is an added burden on the part of the person who maintains such plant which is an added cost to his doing
7919 business in anthracite, is not that so? A. That is so, as I have already pointed out.

Q. And in our answer do we not set forth figures furnished you by the General Auditor of the company as to the cost in connection with handling and selling of anthracite by the Sales Company and the maintenance of certain storage plants designated there? A. That is true.

Q. Now, A. Pardee & Company was one of the concerns which had a purchase contract with the Lehigh Valley Coal Company at the time you took over their selling business, was it not? A. Yes.

7920 Q. Counsel for the Government has asked you whether the Coal Company has ever objected, so far as you know, or within your knowledge, or otherwise, to continuing the purchases by your company of the tonnages produced by the vendors in the 65 per cent. contracts that were in force March 1st, 1912, after the cancellation of the contract in that form about June 1st, I think exactly June 1st, 1913. What you did with those concerns in dealing subsequent to June 1st, was a matter of

negotiations between you and them to provide for a con- 7921
tinuance, temporary or otherwise, of handling their products, isn't that right? A. That is right.

Q. And nothing else? A. Exactly.

Q. You made no increases in tonnages from outside concerns other than those in any way, did you? A. No. That amounted in tonnage to practically a continuation of taking what we had been taking before.

Q. Now, Mr. Machen has asked you at great length about your purchase of the stock of the Lehigh Valley Coal Company at storage plants. I want to understand 7922
myself as to one or two phases of his line of inquiry. Our Sales Exhibit prepared by Mr. Summers, your Auditor, No. 32, gives definite tonnage as well as prices, and definite amounts paid. You will note by an examination of it—does it not? A. It does.

Q. And you spoke of the fact, if I understood you that the sums you paid for this coal so purchased worked out within a very small figure of the figures at which the Lehigh Valley Coal Company carried that coal as representing the book value? A. Yes.

Q. It worked out that way? A. Yes. 7923

Q. What do you mean by that expression now, have you explained that? A. I think I could explain that best by reference to Mr. Tompkins' testimony, in which he showed that his book values differed from the amount paid, shown here, by about $8,000.

Q. Out of a total sum of—— A. $1,852,869.68.

Q. Again, you said you took over the storage plants as of the morning of March 1st, 1912, we will say, and the employes there then became your employes. Did
you receive reports of actual tonnages there? A. Yes. 7924
You say actual tonnages. Their book values, as they stood of that day, book tonnages.

Q. And you used the only practical way within your knowledge of ascertaining the tonnages, then? A. Yes.

Q. As of that date? A. Yes, at the beginning of our business.

Q. And it was upon that investigation and that computation upon estimate and examination, that the ton-

7925 nages were arrived at and the payments made? A. Yes, exactly.

Q. Was there any other way that you know of by which you were able practically to purchase so large a tonnage in storage, as coal is handled and held in storage, and in so many places? A. I don't know of any other way in which we could have acquired title to it at a given time.

Q. Now, what matters have you had up with the Lehigh Valley Railroad and its coal freight department
7926 during your life as the Sales Company in the way of differences or demands or requests on your part as to matters associated with freight? A. Well, there is the rate to Chicago via the Lehigh Valley, Nickel Plate and Pennsylvania.

Q. You refer, do you, to their publishing an announcement that they were going to add to the tariff by the routes which you speak of, or by all routes to Chicago? A. No, I refer to an effort to get a rate via the Pennsylvania the same as via other roads.

7927 Q. Now, that matter was up for demand on your part about when? This spring, wasn't it, speaking generally? A. Yes, this spring.

Q. At or about that time was there a notice of their increasing the rate of freight for anthracite to Chicago? A. Yes.

Q. What steps, first of all, did you take against the establishment of that rate or putting it into effect? Did you make any complaint of that, or what did you do? Just tell us? A. Yes, I complained to the coal freight agent, Mr. Grier.

7928 Q. Then what steps? Did you consider the question of complaining to the Interstate Commerce Commission? A. Yes, I did.

Q. What happened about that time? A. Well, about that time I was advised by counsel that the Commission had suspended those tariffs which already had been filed which we were remonstrating against.

Q. Do you remember what length of time that suspension was to cover? A. I think it is September 1st, this year.

Q. Now, in connection with your request for routing or securing a joint tariff by the Lehigh Valley, Nickel Plate and Pennsylvania to Chicago, what was their reply to your request for that? Did they concede it? Just tell me what happened? A. No, they did not concede it. 7929

Q. And what was their reason that they gave you for not complying? A. The reason given was that the rates in general were under consideration, and that they would not do anything at the present time, at least, until the matter of rate increase was decided upon.

Q. Well, that was a joint rate we are speaking about now, Lehigh Valley, Nickel Plate and Pennsylvania, wasn't it? A. Yes. 7930

Q. It naturally, then, would require concurrence, if it were voluntarily published, I mean, of three railroads, isn't that right? A. Yes.

Q. It could not be done, I mean, by the Lehigh Valley Railroad alone? A. No.

Q. What, if you can recall, was your demand of the Lehigh Valley Railroad, or your company's demand, for the publishing of a tariff to points east of Utica? A. We requested that certain points in there be given new rates, lower rates than existed, because under the present tariffs they were out of line and the rates were too high, and we could not do business there. 7931

Q. What was the reply to that request? A. The request was granted on one or two points, and as to the others, it was declined.

Q. Is that still up between you, that is to say, are you still following that up and fighting for that? A. Yes, I am still contending that that is proper, that it is proper to make such reductions. 7932

Q. Is your demand a just one in your opinion? A. It is.

Q. In case they are unwilling to acquiesce in publishing such tariffs at the points other than those which they finally did publish them east of Utica, what is your intention in connection with that?

Mr. Machen: I object.

7933 The Witness: The Interstate Commerce Commission is our last resort.

Q. Now, do you recall their imposition of a tariff or regulation as to what I call minimum carload weights? A. Yes.

Q. Did you object to that? A. I did.

Q. Was your objection acquiesced in by Mr. Grier? A. There was a slight modification made in the tariff.

Q. Is it satisfactory to you? A. Partially.

Q. Well, I mean completely? Of course it is so far
7934 as it is modified. In other words, was it such as to make it equitable now with reference to your minimum car weights? A. No, not in all cases. It all depends upon the car. That is a matter of the individual equipment.

Q. Is that matter still up in negotiation as between you and the Lehigh Valley Railroad, to try to get them to make a still further adjustment? A. I consider it so.

Q. Well, you would be the one of the Lehigh Valley Coal Sales Company in charge of such matters, or would that be Mr. Evans? A. I would usually delegate that
7935 sort of thing to Mr. Evans to take up with the railroad people.

Q. Now, do you not recall that sometime about the 1st of February, 1912, that you as one of the negotiators for a contract with the Coal Company took up for consideration what the terms of that contract should be as between the Sales Company and the Coal Company? A. Yes.

Q. And were you not represented in those conferences by counsel for the Lehigh Valley Coal Sales Company? A. I was, by present counsel in this case, Mr. Warren.

7936 Q. And the Lehigh Valley Coal Company had Judge Wheaton as counsel, and you had myself for the representative of the buyer? A. That is correct.

Q. And throughout the negotiations following I participated in the various discussions and conferences, as counsel for the Lehigh Valley Coal Sales Company, did I not? A. Yes.

Q. And Judge Wheaton for the Lehigh Valley Coal Company? A. Yes.

Q. How many drafts, can you recall, were made in- 7937
volving material changes in connection with the contract effective March 1st, 1912, known as Exhibit No. 3, prior to this final form in which it was agreed to by you and your side of the conference, and the Lehigh Valley Coal Company and their side? There were several, weren't there? A. Nine or ten.

Q. It was a very large problem both parties were dealing with, was it not? A. It was.

Q. As to such additional facilities as I understood you to say had been furnished at your request by the coal 7938
company at the places named, have you complied with the contract in the matter of the adjustment of rental on the basis of four and one-half per cent. of the value of such additional facilities? A. We have; we pay additional rent at that rate.

Re-Cross Examination by Mr. Machen:

Q. You have said that a storage plant is too expensive a proposition for a small shipper. I suppose you would not deny that it is in itself a very desirable thing and 7939
facilitates the handling of the coal business very much? A. It does at times, but your interest on your investment runs all the year, your repairs run all the year, and that is what makes it expensive. Your cost will more than offset your temporary advantages from time to time.

Q. It is a great advantage to be able to ship your coal to the storage plant in the summer when the trade is slack, and then have it convenient to be delivered in winter when prices are high and business flourishes? A. I don't know anything about the high prices, but it 7940
is an advantage to the public to have such a stock of coal available in times of shortage and hard weather.

Q. Doesn't it permit the operator to keep his mines running to the full during the summer? A. Not to the full, no.

Q. Well, more nearly to the full than he would otherwise be able to do? A. Yes, to a certain extent. That is, as I say, they operate for the benefit of the public; it is an expense upon the Coal Sales Company.

7941 Q. That is, the operation of the plant is an expense to the Coal Sales Company? A. Yes.

Q. But the continuance of the mining at a steady rate or more nearly steady rate is an advantage to the mine operator, isn't it? A. And an advantage to the public.

Q. And also the public? A. Yes.

Q. Isn't the advantage to the mine operator also very great in that he is able to keep his hands together, and he is not obliged to cut his force short during the summer months? A. I think it is, and I think it is indirectly
7942 also an advantage to the public, because it keeps the cost of mining down and the supply of coal ahead of the demand.

Q. And it would be a still greater advantage to the public if all the operators could keep their forces together during the summer, wouldn't it? A. I don't know about that. You might reach the point that is sometimes known as *reductio ad absurdum*, or something of that sort.

Q. I suppose that the Lehigh Valley Coal Sales Com-
7943 pany is earnestly opposing the five per cent. increase in coal rates and rates on other commodities? A. It has not taken any active steps.

Q. It is also vigorously opposing the attempt of the railroad company to increase the rate from the Wyoming region to Perth Amboy as fixed by the Meeker case?

Mr. Warren: I object to the question because it is in evidence here that that attempt on the part of the Lehigh Valley Railroad was objected to by the Commission, and that they prevented the Lehigh Valley from increasing that rate,
7944 therefore there is no occasion for the Sales Company participating in it.

The Witness: No.

Q. I suppose also it is participating with some of the independent shippers as against the railroads in Docket 4,914, the pending investigation by the Commission as to the reasonableness of the rates on anthracite coal?

Mr. Warren: I object to the question because 7945
there is an assumption in it that the Sales Company is in some way, unknown to me, a dependent shipper, of which there is no evidence in this case.

The Witness: No.

Re-Re-Direct Examination by Mr. Warren:

Q. Do you know anything about the pending investigation? A. I assume it refers to something I have seen in the newspapers about the general investigation of rates, 7946
generally known as the proposed five per cent. increase.

Mr. Warren: I call attention to the stockholders list of the Lehigh Valley Railroad of date as of March 28th, 1914, in evidence, to the fact that about that date it appears that Mr. Eben B. Thomas, the President of the Lehigh Valley Railroad Company, was only the owner of 150 shares of Common stock of the Lehigh Valley Railroad out of a total number of shares of 1,210,034.

Mr. Howland: I desire to read into the record 7947
a letter dated July 28th, 1914, addressed to Messrs. Root, Clark, Buckner & Howland, and signed by Mr. W. N. Ely, Vice-President of the Girard Trust Company. (Reading):

Capital $2,500,000 Surplus $7,500,000.

E. B. Morris, President GIRARD TRUST COMPANY
Wm. Newbold Ely, Vice-President
A. A. Jackson, Vice-President

Chartered 1836 Cable Address "Girard."
Broad & Chestnut Streets 7948

C. J. Rhoads, Vice-President & Treasurer
Edw. Sydenham Page, Secretary
George H. Stuart, 3rd Asst. Treasurer
Samuel W. Morris, Asst. Secretary,
Jonathan M. Steere, Trust Officer.
Minturn T. Wright, Real Estate Officer.
Lardner Howell, Asst. Trust Officer.

7949 Philadelphia, July 28, 1914.

Messrs. Root, Clark, Buckner & Howland,

31 Nassau Street, New York, N. Y.

Dear Sirs:

The Unted States of America v. *Lehigh Valley Railroad Company, Girard Trust Company, et al.*

This letter is written in compliance with your request for a written statement of certain facts con-
7950 cerning the Lehigh Valley Railroad Company's general consolidated mortgage of 1903, and collateral trust agreement of 1905, under both of which the Girard Trust Company is trustee.

The writer as vice-president of the Girard Trust Company (an office continuously held by him since April 16, 1900), verified the answer of the Girard Trust Company in this suit.

General Consolidated Mortgage—September 30, 1903.

7951 A counterpart original of the general consolidated mortgage was duly executed by Lehigh Valley Railroad Company and by Girard Trust Company, as trustee, and delivered to the Girard Trust Company, as trustee, on or about September 30, 1903, and such counterpart original has remained in the possession of the Girard Trust Company continuously since that date. No alteration of the terms of this mortgage has been made, nor has the mortgage been satisfied or discharged save that partial
7952 releases of property subject to the mortgage have been given from time to time in accordance with the release provision of the mortgage.

The Girard Trust Company as trustee under the general consolidated mortgage holds at the present time $1,965,000 par value of stock in The Lehigh Valley Coal Co., that is to say 39,300 shares of the par value of $50 each. The certificates for all of this stock are in the possession of the Trust Company. 39,190 shares of this stock stand on the books

of the Coal Cmpany in the name of "Girard Trust 7953
Company as Trustee under the mortgage of Lehigh Valley R. R. Co. Dated September 30, 1903." The balance of such stock, amounting to 110 shares, stands on the books of The Lehigh Valley Coal Company as follows:

5 shares in each of the followng names:

Edward T. Stotesbury
Eben B. Thomas
Irving A. Stearns
H. J. McQuade 7954
Daniel G. Reid

10 shares in each of the following names:

Frank W. Wheaton
F. M. Chase

20 shares in the name of L. D. Smith and
45 shares in the name of David G. Baird.

Of the shares standing in the name of the Girard 7955
Trust Company as Trustee 13,500 shares are represented by stock certificate No. 68 bearing date July 7, 1905; 18,890 shares are represented by certificate No. 76, and 7,000 shares by certificate No. 78, both certificates bearing date February 19, 1908. To the best of the writer's remembrance these stock certificates were delivered to the Girard Trust Company, as trustee, on or about the dates of the several certificates. Since their delivery these certificates have remained continuously in the possession of the Gir- 7956
ard Trust Company. In the case of 110 shares standing in the names of persons other than the Girard Trust Company the certificates for these shares have been endorsed in blank by the record holders thereof and have been delivered to and are now held by the Girard Trust Company as trustee under the said mortgage.

All of the certificates of stock in The Lehigh Valley Coal Company held by the Girard Trust Com-

7957 pany as trustee, as above set forth, were delivered to the Girard Trust Company by the Lehigh Valley Railroad Company.

The Girard Trust Company as trustee under the general consolidated mortgage also holds at the present time $1,216,325 par value of stock in New York and Middle Coal Field Railroad & Coal Company, that is to say 48,653 shares of the par value of $25 each. The certificates for all of this stock are in the possession of the Trust Company. 48,628 shares
7958 stand on the books of the New York & Middle Coal Field Railroad & Coal Company in the name of "Girard Trust Company as trustee under the mortgage of Lehigh Valley R. R. Co. dated September 30, 1903." The balance amounting to 25 shares stand on the books of the New York & Middle Coal Field Railroad & Coal Company as follows:

5 shares in each of the following names:

E. B. Thomas
J. A. Middleton
7959 L. D. Smith
E. T. Stotesbury
F. M. Chase

Of the shares standing in the name of the Girard Trust Company, as trustee, 42,441 shares are represented by stock certificate No. 1320 bearing date May 19, 1905, 5321 shares are represented by certificate No. 1337 bearing date January 23, 1907, 345 shares by certificate No. 1343 bearing date October 11, 1907,
7960 200 shares by certificate No. 1345 bearing date October 30, 1907, 34 shares by certificate No. 1346 bearing date December 11, 1907, and 287 shares by certificate No. 1352 bearing date February 17, 1908. To the best of the writer's remembrance these stock certificates were delivered to the Girard Trust Company, as trustee, on or about the dates of the several certificates. Since their delivery these certificates have remained continuously in the possession of the Girard Trust Company. In the case of the

25 shares standing in the names of persons other than the Girard Trust Company the certificates for these shares have powers of attorney endorsed in blank by the record holders thereof and have been delivered to and are now held by the Girard Trust Company as trustee under the said mortgage. 7961

All of the certificates of stock in New York & Middle Coal Field Railroad & Coal Company held as above stated by Girard Trust Company as trustee, were delivered to the Girard Trust Company by the Lehigh Valley Railroad Company.

These shares of stock in The Lehigh Valley Coal Co. and in New York & Middle Coal Field Railroad & Coal Company were transferred and delivered to Girard Trust Company, as Trustee, and the other property specified in the mortgage was conveyed and pledged to Girard Trust Company, as trustee, for the benefit and security of the holders of the bonds of Lehigh Valley Railroad Company, which were to be made, certified and issued all as set forth in the mortgage to an aggregate principal amount not exceeding $150,000,000 at any one time outstanding. Such bonds are known as the General Consolidated Mortgage Gold Bonds of the Lehigh Valley Railroad Company. 7962 7963

Of these bonds there have been certified by the Girard Trust Company and delivered to the Railroad Company, in accordance with, and in the manner provided in, the mortgage, $49,639,000 principal amount, all of which (so far as the records of the trustee disclose) are now outstanding. The following table accurately states the several dates on which such bonds thus certified by the Girard Trust Company were delivered to the Railroad Company and the principal amount thereof delivered on each date: 7964

1905 March 10	$4,000,000
1905 March 15	1,000,000
1905 March 16	1,000,000
1905 March 17	1,000,000
1905 March 21	1,000,000
1905 March 24	2,000,000

7965

1905 March 29	1,500,000
1905 April 3	1,500,000
1905 April 7	2,000,000
1905 April 28	3,100,000
1905 May 2	2,000,000
1905 December 13	100,000
1906 May 7	3,900,000
1906 December 20	5,539,000
1911 April 11	10,000,000
1913 December 17	10,000,000

7966

Collateral Trust Agreement—November 1, 1905.

A counterpart original of the collateral trust agreement was duly executed by Lehigh Valley Railroad Company and by Girard Trust Company, as trustee, and delivered to Girard Trust Company, as trustee, on or about November 1, 1905, and such counterpart original has remained in the possession of the Girard Trust Company continuously since that date. No alteration of the terms of this agree-

7967

ment has been made, nor has the agreement been satisfied or discharged, nor has any of the security deposited with the trustee under said agreement been released.

The Girard Trust Company under this collateral trust agreement holds at the present time $2,910,150 par value of stock of Coxe Brothers & Co., Inc., that is to say, 58,203 shares of the par value of $50 each; also $1,500,000 par value of stock in The Delaware, Susquehanna & Schuylkill Railroad Co., that is to say, 30,000 shares of the par value of $50 each.

7968

The certificates for all of this stock are in the possession of the Trust Company. 58,178 shares of stock in Coxe Brothers & Co., Inc., stand on the books of said company in the name of "Girard Trust Company, Trustee under Collateral Trust Agreement dated November 1, 1905, of Lehigh Valley R. R. Co." The balance of such stock, amounting to 25 shares, stands on the books of said Coxe Brothers & Co., Inc., as follows:

5 shares in each of the following names: 7969

E. B. Thomas
E. T. Stotesbury
Daniel G. Reid
F. M. Chase

3 shares in the name of L. D. Smith
1 share each in the names of
D. G. Baird
H. J. McQuade

The 58,178 shares standing in the name of the Girard Trust Company, as trustee, are represented by stock certificate No. 46 bearing date November 1, 1905, which certificate was delivered to the Girard Trust Company, as trustee, on said date and has remained continuously in its possession since the date of its delivery. 7970

In the case of the 25 shares standing in the names of persons other than the Girard Trust Company, the certificates for these shares have been endorsed in blank by the record holders thereof and have been delivered to and are now held by the Girard Trust Company as trustee under the said collateral trust agreement. 7971

29,965 shares of the stock in the Delaware, Susquehanna & Schuylkill Railroad Company stand on the books of said Railroad Company in the name of "Girard Trust Company, Trustee under Collateral Trust Agreement dated November 1, 1905, of Lehigh Valley R. R. Co.," and the balance of such stock, amounting to 35 shares, stands on the books of said The Delaware, Susquehanna & Schuylkill Railroad Company as follows: 7972

5 shares in each of the following names:

E. B. Thomas
E. T. Stotesbury
J. A. Middleton

7973 4 shares in each of the following names:

William C. Alderson
L. D. Smith
J. M. Baxter

3 shares in the name of T. N. Jarvis

1 share in each of the following names:

John Anderson
D. G. Baird
J. Wm. Robbins
James A. Hart

7974 Wm. B. Cramer

The 29,965 shares of said stock standing in the name of Girard Trust Company, as trustee, are represented by stock certificate No. 55 bearing date November 1, 1905, which certificate was delivered to the Girard Trust Company, as trustee, on said date, and since its delivery has remained continuously in the possession of the Girard Trust Company. In the case of the 35 shares standing in the

7975 names of persons other than the Girard Trust Company, the certificates for these shares have been endorsed in blank by the record holders thereof and have been delivered to and are now held by the Girard Trust Company as trustee under said collateral trust agreement.

These shares of stock in Coxe Brothers & Co., Inc., and in The Delaware, Susquehanna & Schuylkill Railroad Company were transferred and delivered to Girard Trust Company, as trustee, for the benefit

7976 and security of the holders of the bonds of Lehigh Valley Railroad Company, which were to be made, certified and issued, all as set forth in the trust agreement, to an aggregate principal amount not exceeding $19,000,000 at any one time outstanding. Such bonds are known as the Collateral Trust Four Per Cent. Gold Bonds of Lehigh Valley Railroad Company.

Of these bonds there have been certified by the Girard Trust Company and delivered to the Rail-

road Company in accordance with, and in the manner provided in, the Collateral Trust Agreement, $19,000,000 principal amount. All of such bonds were thus delivered to the Railroad Company on November 1, 1905. Of these bonds so certified and delivered $7,000,000 principal amount have matured by their terms and have been paid by the Lehigh Valley Railroad Company and cancelled. The balance, amounting to $12,000,000 principal amount, is now outstanding, so far as the records of the trustee disclose. 7977

Very truly yours, 7978
(Signed) Wm. N. Ely,
Vice-President.

Note: It is agreed by counsel for all parties that Mr. Ely if called as a witness in the case and sworn, would testify in accordance with the foregoing letter, and no objection is taken by any of the parties to the manner of the proof.

Whereupon an adjournment was taken until July 31st, 1913, at 10.00 A. M. 7979

UNITED STATES OF AMERICA vs. LEHIGH VALLEY RAILROAD Co., *et al.*

New York, July 31, 1914, 10.00 A. M.

Hearing resumed pursuant to adjournment.

APPEARANCES AS BEFORE. 7980

William L. Summers, recalled.

Direct Examination by Mr. Warren:

Q. Now, Mr. Summers, have you taken the Coal Sales Company Exhibit No. 3, being the appraisal by Mr. Wilgus of certain storage plants and other facilities and and the aggregate value or valuations of all plants appraisal, giving the Wilgus valuation on your tabulation, and the aggregate value or valuations of all points ap-

7981 praised by Wilgus, and then ascertained the amounts paid for rents, taxes, maintenance and insurance upon each one of those plants and aggregated them, and then calculated the rate of interest on the valuation which those sums, rents, taxes, maintenance and insurance, amounted to? A. Yes, sir.

Q. For the calendar year 1913? A. Yes, sir.

Q. And is that tabulation which I now show you a correct statement first of the Wilgus valuation figures, second, of the sums paid in the second column for rents,
7982 taxes, maintenance and insurance by the Sales Company for that year, and third a correct valuation as to the rate of interest on that valuation? A. Yes, sir.

Q. It appears then that there is a grand average of seven per cent on the aggregate value of all plants by way of rentals or obligations on the part of the tenant? A. Yes, sir.

Q. As to some the percentage is nine, and some eight, some six and some seven, and only one five, isn't that right? A. That is correct.

Mr. Warren: I offer it in evidence.

7983 (Marked **Lehigh Valley Coal Sales Company Exhibit No. 49.**)

Q. Have you also prepared a statement of receipts and expenditures for March and April, 1912? A. Yes.

Q. That is the first two months of the business of the Sales Company? A. I have.

Mr. Warren: We offer that.

(Marked **Lehigh Valley Coal Sales Company**
7984 **Exhibit No. 50.**)

Q. At the request of counsel for the Government did you prepare a statement of repairs and renewals at South Plainfield storage plant from March 1st, 1912, to December 31? A. Yes, sir.

Q. In other words the items and the dates of expenditures representing the figures $6,414.31? A. I did.

Mr. Warren: I offer this in evidence.

(Marked **Lehigh Valley Coal Sales Company Exhibit No. 51.**)

Q. Did you also prepare a statement of the amounts and moneys for insurance that the Sales Company has expended from March, 1912 to July, 1912, and from August, 1912 to July 31, 1913? In other words, a grand total from March 1st, 1912, to July 31, 1913? A. Yes, sir. 7985

Q. Those dates in this tabulation are stated this way for what reason? A. Because that represents the insurance year.

Mr. Warren: I offer this in evidence.

(Marked **Lehigh Valley Coal Sales Company Exhibit No. 52.)** 7986

Q. That represents premiums paid on account of insurance on coal which the Sales Company owns and holds in storage, is that right? A. Yes, sir. Of course it does not represent the total amount of the coal in storage, because there are some storage plants where we——

Q. (Interrupting.) I understand that; I mean that this expenditure is on account of the coal in storage? A. Yes. 7987

Q. Have you prepared a statement of the gross amount of business for the thirteen months ending March 31, 1913? In other words, to cover the first month of your business, and then your fiscal year ending March 31, 1913, and also for the fiscal year, that is to say the twelve months, ending March 31, 1914? A. Yes, sir.

Q. And is this a correct statement of the gross business, appearing on this tabulation? A. It is.

Q. Have you also prepared on a similar tabulation a statement of all earnings distributed to stockholders by way of dividends, the date of the payments to the stockholders and the amounts and the rate per cent. of the dividends? A. Yes, sir. 7988

Q. Is this a correct statement of that? A. It is.

Q. Now, the last line prior to the total says: "Special 25 per cent., January 17, 1914," and then gives the figures, the amount. What amount, if you know, of that cash dividend, the distribution of which was accompanied with a circular giving to the stockholders the privilege of subscribing in new stock of the Sales Company, was

7989 utilized by stockholders, for that purpose? A. $1,494,737.50.

Q. And what was the amount of that cash dividend, no matter who the stockholders were to whom it was distributed, that was not used by the owners of that cash dividend to avail themselves of this privilege to take your additional stock? A. $19,687.50.

Q. So that, with the exception of that figure $19,687.50, the entire special 25 per cent. dividend of date January 17, 1914, was a transfer from the surplus in the com-
7990 pany in one form to additional stock in another? A. Yes, sir.

Q. How much, if you know, of that $19,687.50, if any, was later used by the owners of that cash dividend to take additional stock, and under what circumstances? A. $1,037.50 was applied to the purchase of stock by parties who had received the 25 per cent. dividend.

Q. That is, out of that $19,000 figure you mean? A. Oh, yes, yes, sir.

Q. What representation did they make, and how did it come about? A. I am not familiar with that.

7991 Q. I thought you said it was due to some claim of a misunderstanding? A. That is my understanding, but I could not swear to it.

Q. Your understanding is that they claimed there was some misunderstanding on their part in the matter, and they were accorded the privilege on that representation? A. Yes, they being in a foreign country or something like that.

Mr. Warren: I offer that exhibit.

(Marked **Lehigh Valley Coal Sales Company**
7992 **Exhibit No. 53.**)

Q. I understood you to say the other day that Coal was stored in the summer time. Did you mean to confine the storage of coal in the summer time as being within your knowledge of your company's storing of coal? Isn't it stored at other times? A. Yes, quite frequently we have to store coal during the winter months; that is, if the season is very open and we do not have cold weather we have to store it then.

Q. Well then, the necessity for storage is constantly present throughout the year for that matter? A. Yes. 7993

Cross-Examination by Mr. Machen:

Q. Referring to Coal Sales Exhibit No. 49, won't you tell us how you calculated the percentage of interest on the Wilgus valuation for the aggregate value of all the premises mentioned in that exhibit? A. By determining the—taking the total amount of Mr. Wilgus' valuation and the total amount we have paid for rent, taxes, maintenance and insurance, and the total of the total amount paid by us, $255,000 is equivalent practically to seven per cent. 7994

Q. Do you mean to tell us that by dividing $255,901.16 by $3,966,138 you arrive at seven, or anything like seven? A. Well, of course, I have given a flat rate of interest here; I think it is over six and one-half per cent.

Q. Figure it out now and see what it is? A. (Figuring.) 6.45, it is.

Q. So that instead of the total yield being seven per cent. on the Wilgus valuation as shown by Coal Sales Exhibit No. 49, the accurate figure would be 6.45 per cent.? A. I guess that is right. 7995

Mr. Warren: You did not make fractions of per cent. as to any of these per cents did you?

The Witness: No.

Q. You took the highest percentage, that is to say, if it was over six you counted it as seven, did you? A. Well, my own procedure is, if it is over six and a half we call it seven; but this is evidently under. I did not do these calculations myself, I had them done. 7996

Mr. Warren: In other words, it is a mistake, you got that under the half and called it over the half?

The Witness: Yes.

Q. Are all the others as accurate as that? A. Well, I would like to go over them and verify them myself.

Mr. Warren: Suppose you just do that, then.

7997 Q. Well, suppose you put it down at decimals, carry it out instead of to the nearest per cent., carry it out to two decimals.

Now referring to Coal Sales Exhibit No. 51, which was stated by your counsel to have been prepared at the request of counsel for the Government, that does not show at all what the nature of the supposed repairs was, does it? A. No, it does not show.

Q. It simply shows that so much expenditure was made for labor and materials? A. Yes, sir; that is made up
7998 of numerous small items running from perhaps $1.50 to $75 to $80.

Q. But what I was asking you for, if I asked at all, was for the nature of the changes or restorations made in the plant, but I do not want to delay the case by insisting upon that? A. I understand these expenditures in this exhibit are for ordinary routine repairs going on from month to month.

EXAMINATION TEMPORARILY SUSPENDED.

7999

Wellington M. Bertolet, a witness called on behalf of the Lehigh Valley Railroad Company, being first duly sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. What is your business? A. I am Secretary of the Pennsylvania Retail Coal Merchants Association.

Q. Will you tell us just in a brief way what that asso-
8000 ciation is? A. That is an association of retail coal merchants of Eastern Pennsylvania, New Jersey, south of Trenton, Delaware and Maryland, consisting of approximately 950 retail merchants.

Q. How long have you held that position? A. Ten years.

Q. And what are your duties? A. My duties are to generally conduct the affairs of the association.

Q. Do you as Secretary and in line with your duties come in contact with the general affairs of retail dealers? A. I do.

Q. And is it part of your duty to keep familiar with 8001
their affairs? A. Yes, it is part of my duties.

Q. From whom do the various merchants in your association purchase their coal? A. Well, the merchants purchase coal from, I suppose, practically every anthracite operator, including the Lehigh Valley Coal Sales Company, the Susquehanna Coal Company, the Philadelphia & Reading Coal & Iron Company, the Lehigh & Wilkes-Barre and practically every individual operator.

Q. Is there an active and keen competition in respect of the sale of coal to the retail dealers? A. There is 8002
very keen competition, at this time especially.

Q. Is the effect of a reduction in the price of coal of fifty cents a ton on the 1st of April a beneficial one to the trade, and is it promotive of trade or otherwise?

Mr. Machen: Objected to as an opinion.

A. The reduction of 50 cents a ton, taken in connection with the gradual rise of ten cents a ton per month, is a very beneficial arrangement so far as the retail trade is concerned. It makes possible the sale of coal at a 8003
period of the year when the consumer otherwise would not buy; it relieves the retailer of considerable storage. The consumer when the reduction of 50 cents per ton is made in April, will put in his order at that time, whereas if no reduction were made he would wait until his requirements made deliveries necessary; in other words, he would wait until cold weather came before he filled his cellar. Under the present arrangement I think the great portion of the consumers, certainly those who can afford to fill their cellars, do so in the months of April, 8004
May and June, because of this price reduction.

Q. Do the retailers located along the line of the particular railroads buy their coal freely and irrespective of the existing connections between any of the large producing coal companies and the railroads?

Mr. Machen: Objected to as a matter of opinion, and one on which the witness has not been shown to be qualified.

8005 A. I think they do purchase without any feeling of compulsion that they should have to deal with any coal producing company by reason of any supposed connection between that company and any railroad.

Q. For instance, dealers located along the line of the Reading buy freely from all companies, Philadelphia & Reading Coal & Iron Company among others? A. From all companies who have connections on that railroad, and who ship over that railroad.

Q. And do the dealers who are members of your asso-
8006 ciation and who are located along the line of the Lehigh Valley Railroad buy freely from all of the wholesalers of anthracite? A. They do.

Q. Is there an active and vigorous solicitation of their business by different wholesalers of anthracite? A. I don't think the competition between the producing companies or the selling anthracite companies has ever been as keen as it is to-day, at this very moment, and that in spite of the fact that, so far as the retail trade is concerned it looks upon the—what we call the carrying com-
8007 panies and their connections as selling at a uniform price. The fact remains, that those companies, so far as we are concerned are competing for business all along.

Q. And do the retailers shift their orders according to the effect of the solicitors from time to time? A. They shift their orders largely with respect to the service that they get in the matter of deliveries, especially, and the preparation of coal.

Q. Are the retail dealers satisfied with the prices, at which they buy coal?

Mr. Machen: Objected to.

8008

A. I think, generally speaking, I may say yes; and I narrow my answer to the price of coal at the mines.

Q. What in your opinion would be the effect of a reduction in freight rates upon the retail price of coal to consumers?

Mr. Machen: Objected to as a matter of opinion and speculation.

The Witness: I think, of course, that would largely depend upon the extent of the reduction. If a slight reduction were made, I question very much whether it would have any effect on the retail price of coal; my reason for that is that the retail margin of profit, net profit, is already very small. If it were a considerable increase, for example, if the freight were cut in half, undoubtedly there would be a reduction in the retail price. 8009

Mr. Gordon: You said increase, you mean decrease of course. 8010

The Witness: Decrease I meant.

Q. Does this competition in respect of the purchase of coal among the retailers exist irrespective of the origin of the coal, that is the railroads which originate the haul, in other words does the coal which originates on the Lackawanna and the coal which originates we will say, on the Pennsylvania Railroad—that is the haul of which originates on the Pennsylvania Railroad or on the Reading—come into competition with the coal, the haul of which originates on the Lehigh Valley in a great many cases? A. Yes, where these various companies can make deliveries. 8011

Q. Is it one of your duties to seek the adjustment of any complaints which retailers have in respect of the railroad service they get? A. That is one of my duties, yes.

Q. To what extent have you heard of any unfair treatment, or prejudicial treatment being practiced against dealers along the line of the Lehigh Valley Railroad? A. I have never heard of a case along the Lehigh Valley Railroad. 8012

Q. Are you familiar with the fact that some of the dealers who lease trestles, or yards, from the Lehigh Valley Railroad, had clauses in their contracts to the effect that they should obtain all their coal from the Lehigh Valley, or they should ship all their consignments over the Lehigh Valley Railroad? A. I have never heard that with respect to the Lehigh Valley Railroad. I have heard it with respect to various sid-

8013 ings leased from the Reading Railroad Company, but I have never known a case where that clause is enforced.

Q. You never even heard of it existing on the Lehigh Valley? A. Never even heard of it existing on the Lehigh Valley, and I cannot say that it actually exists on the Reading now, but I know that it did some years ago. Those contracts required that the lessee of the siding should purchase a certain percentage of coal.

Mr. Machen: From whom?

The Witness: From the Philadelphia & Read-
8014 ing Coal & Iron Company. But I have never heard of one of those contracts being enforced, and I don't know whether they are in existence now.

Q. Is there any business advantage, or any economic advantage involved, in having the coal which originates at mines located on the rails on the Lehigh Valley sell at points on the Lehigh Valley? In other words, in order to avoid an interchange between two railroads?

8015 Mr. Machen: Objected to as matter of opinion and speculation on which the witness is not competent, and not shown to be competent to speak.

The Witness: My opinion would be that there would be considerable advantage in selling coal in that way. It would save the expense of transferring from one line to the other.

Q. And has that been the natural course of the commerce in anthracite during the ten years you have been
8016 familiar with the business? A. There is no question about that. The Philadelphia & Reading Coal & Iron Company, for example, I know that better than any other, has developed its line trade along the lines of the Philadelphia & Reading Railroad.

Q. And has that been a public advantage?

Mr. Machen: Objected to for the same reasons.

A. I think it has.

Q. How many of the members who are members of 8017
your association are located at points on the lines of the Lehigh Valley Railroad, or can you give me an approximate number? A. I cannot tell you that offhand. I should certainly say one-third of our members take Lehigh Valley shipments.

Q. In other words, over 300? A. Yes.

Q. The Government's petition in this case charges that the Lehigh Valley Coal Company prior to March, 1912, and that since that time the Lehigh Valley Coal Sales Company, has dominated the markets for anthra- 8018
cite at different points on the Lehigh Valley Railroad. What would you say as to that charge? A. I don't know what you mean by dominated. I certainly think that the Lehigh Valley Coal Company during that period has certainly sold more tonnage along its own lines than any other company, but if you mean by "dominated" that those two mentioned companies have during those periods ousted or prevented any other companies from selling coal in the same territory, I should say that it has not dominated it.

Q. Or has been guilty of any unfair practices or im- 8019
proper business practices? A. Not to my knowledge. The only complaint we ever had, as an association, I think, against the Lehigh Valley Coal Company, was in the weighing investigation.

Mr. Machen: Weighing?

The Witness: Weighing investigation, in which all the anthracite carriers appeared, and that is a matter of record. That is the only complaint we ever had against that company.

8020

Q. When was that? A. I think that weighing investigation was in March, 1912.

Q. That was conducted by the Interstate Commerce Commission? A. Yes; you appeared in that.

Q. And what was the result of that? A. The result of that, as I recall the testimony, was that the Lehigh Valley Railroad Company as well as the Lehigh Coal Company, the mining corporation, had a better system and a more accurate method of weighing——

8021 Q. (Interrupting.) That is, they were shown to have? A. Yes, shown to have by the evidence——

Mr. Machen: I object to a statement of what the evidence shows.

The Witness: Well, what I would state is a matter of record.

Mr. Machen: Well, then, let the evidence be produced.

Mr. Boles: Do you want me to incorporate all that record in here?

8022 Mr. Machen: If you think it material, yes.

Mr. Boles: Finish your answer.

The Witness: Showed that the Lehigh Valley Coal Company had a more accurate system of weighing anthracite at its mines than any other anthracite company, with the possible exception of the Susquehanna.

Cross-Examination by Mr. Machen:

Q. How long have you been Secretary of the Retail
8023 Coal Merchants' Association of Pennsylvania? A. Ten years.

Q. Has your knowledge of the coal trade been derived from your connection with that association? A. In some measure.

Q. What other experience have you had? A. I lived in the anthracite region for a number of years.

Q. When? A. From 1893 to 1898 I lived in the heart of the anthracite region, at Mahanoy Plain, Schuylkill County, Pennsylvania.

8024 Q. That is the heart of the producing region, but not the heart of the selling region? A. The heart of the producing region.

Q. So you could not have acquired much knowledge of the sale of anthracite? A. No, absolutely not at that time.

Q. Were you connected with the trade in any way at that time? A. Not at all.

Q. What was your business at that time? A. I was simply a growing youth.

Q. Simply a boy? A. Yes. 8025

Q. And it is simply the observation of an intelligent young lad? A. Which was very valuable to me.

Q. Very valuable to you when you went into the business? A. Yes.

Q. Your first connection with the anthracite coal business in any form was when? A. In 1904.

Q. When you went to the Pennsylvania Association of Coal Merchants? A. Yes.

Q. Where are the headquarters of this association? A. Reading, Pa.

Q. What do your duties consist in? A. Well, my duties consist of taking up any complaints which members have to make regarding their retail trade, and their relations with shippers of anthracite. 8026

Mr. Boles: And with the railroads?

The Witness: And with the railroads.

Q. Do you remain at your office, or do you travel from place to place? A. Well, I travel whenever it is necessary. I have traveled a great deal, not so much the last three years as I did in the beginning. 8027

Q. Was the association formed when you first went with them, or are they an older association? A. I organized them, helped to organize them, yes.

Q. And you say there are now about 950 members? A. Yes, approximately.

Q. Do you include as members, various persons who are members of the firm, or do you mean by members that many firms? A. Firms; that means businesses, or firms.

Q. These dealers are confined to the States, I think you said, of eastern Pennsylvania, New Jersey and Delaware and Maryland? A. Yes. 8028

Q. Is your association confined to anthracite coal dealers, or does it include bituminous dealers? A. Well, there is a very small proportion of bituminous handled by retailers in the east, outside of the larger cities. Philadelphia, of course, where they cater to the steaming trade, there is considerable bituminous coal handled,

8029 but generally speaking in the smaller towns the retail trade deals to a very small degree in bituminous coal. We have very, very few relations with bituminous firms.

Q. You have very few relations with the bituminous dealers and operators? A. Very.

Q. Do you know how many retail coal merchants there are in the territory over which your association extends? A. Oh, I should say perhaps 1,300.

Q. Where are the majority of your members situated? Where are their places of business, in what portion of
8030 the territory? A. The great majority of our membership is in eastern Pennsylvania, with Reading as the heart, extending from Reading a radius of perhaps 60 miles.

Q. For example, how many members have you in Maryland? A. We have very few members in Maryland; I should say less than twenty.

Q. Where are they situated? A. In little towns outside of Baltimore. We haven't any members in Baltimore.

8031 Q. You don't know anything about the temper of the anthracite coal dealers in Baltimore, as to whether they are satisfied with the situation? A. No, I am not familiar with that.

Q. How many have you in Delaware? A. I should think we have 40 in Delaware.

Q. How many in New Jersey? A. About 140.

Q. You have none in New York? A. None in New York City.

Q. And none in western Pennsylvania or the west? A. None west of Lewistown.

8032 Q. Are any meetings of your association held? A. Oh, yes.

Q. Where are they held? A. In various places in the State of Pennsylvania. We have an annual meeting of the membership. We have——

Q. (Interrupting.) How many members attend? A. Well, we had a meeting in June, and I think the registration was 603.

Q. 603 individuals? A. Yes. I cannot tell you how many firms that represented—but 603.

Q. Where was that meeting held? A. At Allentown, 8033
Pa.

Q. And that is in the center or very near the center of your territory? A. Very near the center of our jurisdiction.

Q. Are there any similar associations elsewhere besides yours? A. I am informed that there are similar associations throughout the United States. There is a New England association; an association of Western Pennsylvania, and New York, I believe and throughout the west. 8034

Q. Your knowledge of the trade consists, then from such information as is imparted to you by the complaints which you receive? A. In part, yes.

Q. And what other sources of information? A. By direct observation.

Q. In what respect by direct observation? A. Well, for example, in this matter of the reduction of price of 50 cents per ton, I have from time to time seen records of various dealers, comparative records, showing the difference in distribution of tonnage caused by that reduction. 8035

Q. Yes. A. That is one example.

Q. Now, isn't it a fact that practically all dealers in anthracite reduce their prices in April? A. I think that is a fact, practically all, not all.

Q. Not only that, but the practice certainly is not confined to the railroad coal companies, is it, or to companies affiliated with the railroads? A. Well, I think generally speaking that is correct, but it is not quite accurate, because——

Q. Well, if generally speaking it is correct, it must be 8036
wholly correct because my question was that it was not confined to railroad companies, and if it is true at all it must be wholly true? A. Well, I would say it was not wholly true.

Q. Explain what you mean by that? A. I mean to say that while the anthracite operators make a reduction of 50 cents per ton in the spring of the year, my experience teaches me that all of the anthracite operators do not make that reduction on the same date.

8037 Q. But practically all make it in the spring of the year? A. Yes.

Q. And all the railroad coal companies make it on the same day? A. What do you mean by all the railroad coal companies?

Q. I mean all the railroad coal companies, I said. I mean all of the companies controlled or affiliated with railroads? A. I don't know. I don't know whether—I can name the companies which I think do make it on the same day, without regard to their affiliations with any

8038 railroad.

Q. And which are they? A. The Susquehanna Coal Company, the Lehigh Valley Coal Sales Company, Philadelphia & Reading Coal & Iron Company, Lehigh Coal & Navigation Company and the Lehigh & Wilkes-Barre, those to my knowledge.

Q. And Delaware, Lackawanna & Western Coal Company? A. Yes.

Q. Hillside Coal & Iron Company? A. I don't know.

Q. What do you mean by saying that you could not speak as to their railroad affiliations? A. Well, I don't

8039 know the present relations between what they used to call the coal carrying railroads—for example, the Susquehanna Coal Company.

Q. You don't keep posted? A. No, I haven't any way of keeping posted.

Q. You don't make any effort to keep posted about that? A. I do if I have to, but you are asking me to state as a matter of fact something I cannot tell. I am giving my impression.

Q. I am not asking you to state anything except as to

8040 what you yourself did? A. Yes.

Q. What efforts you yourself make to keep posted as to this matter of the railroad affiliation of coal companies? A. Well, we always consider that when we are dealing with the Philadelphia & Reading Coal & Iron Company we are dealing with a company whose stock is controlled by the Reading Company, and who has close affiliation with the Philadelphia & Reading Railroad Company.

Q. Yes. And when you dealt with the Susquehanna 8041
Coal Company? A. We felt we were dealing with a company whose stock was owned by the Pennsylvania Railroad Company.

Q. Have you ever heard of the Meeker case? A. Yes, but I am not familiar with the facts.

Q. You are not familiar with the facts? A. No.

Q. Meeker & Company, of course, not being situated in Pennsylvania are not members of your association? A. No.

Q. Have you ever heard of the case of the Plymouth 8042
Coal Company against the Lehigh Valley Railroad? A. Yes.

Q. Have you ever heard of the case of Wertheim Brothers *vs.* The Lehigh Valley Railroad? A. No, I don't know that case.

Q. The L. Wertheim Coal & Coke Company *vs.* The Lehigh Valley Railroad? A. No, I just had a newspaper knowledge of that case, that is all.

Q. Have you ever heard of the case of Markle *vs.* The Lehigh Valley Railroad Company in the Interstate Commerce Commission? A. No. 8043

Q. You do know however there is a grave dissatisfaction with rates on anthracite coal?

Mr. Boles: Objection.

A. With railroad freight rates?

Q. Yes. A. I have heard some objection about anthracite rates in Pennsylvania.

Q. Now, your knowledge of the feeling of retail coal dealers along the line of the Lehigh Railroad, is based upon letters or the lack of letters, which you have received from them making complaints, is that it? A. That is partly true, yes; but I think that I have come in personal contact with practically every member of our association from time to time, and a great deal of my knowledge is gained in that way. 8044

Q. What knowledge have you as to the terms of the contracts between the Reading Coal Company and lessees? A. I have no knowledge as to the present status.

8045 Q. As to the former status? A. I have seen contracts between the Reading Railroad Company and retail dealers, who lease their sidings from that company.

Q. How many such contracts have you seen? A. Not many; I should say very few.

Q. Any? A. It used to be a common understanding among the retail trade that a retailer who leased from a coal carrying railroad should buy a certain percentage of coal from the producing company whose stock was controlled by the railroad.

8046 Q. Yes. A. I think I am right in saying that that feeling has entirely—does not exist any more, and it has not existed for two or three years, because those contracts have never been enforced to my knowledge.

Q. You were interrogated as to the advantage of confining the coal traffic originating on one road to dealers along the line of that road. Now, I understood you to say that you approved of that practice because the transfer to another road would be expensive? A. Yes.

Mr. Boles: Unnecessarily expensive he said.

8047 Q. Isn't it a fact that there have been constant efforts on the part of coal dealers to reduce the switching charges so as to enable them to get coal over other railroads? A. I don't know of any case excepting, perhaps, the Philadelphia case. They endeavored to get a reduction, I think of 10 cents a ton, but that case I believe is still pending.

Q. You don't mean to say that it would not be an advantage to the persons living along the line of the railroad if they could get their coal from any mine whatever,

8048 do you, at the same rates? A. I think it would be, yes. Of course you would have greater competition, but it seems to me from my experience that the retail dealer in most every case can get the coal that he wants, the anthracite coal he wants. He may not get the same coal from so many people, but he can get what he wants.

Q. He might get what he wants provided he pays the price? A. Yes.

Q. Now you know of course, and I think you stated that the Lehigh Valley Coal Company is the largest pro-

ducing company along the line of the Lehigh Valley Rail- 8049
road? A. Yes.

Cross-Examination by Mr. Warren:

Q. Now I will ask you a question on behalf of the Lehigh Valley Coal Sales Company. You have no knowledge, have you, of the Lehigh Valley Coal Company selling any anthracite coal since March 1st, 1912, since the time that the Lehigh Valley Coal Sales Company was organized, along the line of the Lehigh Valley Railroad or in your territory? A. Not to my knowledge, no, sir. 8050

Q. You said to counsel for the Government that a retail dealer located on the line, we will say, of the Lehigh Valley Railroad, could get the coal that he desired for his trade, and then the counsel for the Government said "provided he pays the price," as if he was called upon to pay a higher price by reason of his location on the line of that road with a trestle, we will say, or a yard or something. Have you any knowledge of his being called upon to pay any higher price by reason of that fact than that which is paid for coal in that same locality 8051
by somebody else on some other line? A. No, I did not mean to convey that impression.

Q. I assume you do not have knowledge of the prices exacted by each of the members of your association for the coal they sell? A. I haven't that knowledge from all of our members. I think within a year I gathered statistics from about 186 towns, I think, in our territory for the purpose of determining the net profits that a retailer was making.

Q. Generally speaking, retailers sell at the same price in the same locality, do they not? A. I think there is a 8052
tendency towards harmony in prices in the retail trade.

Q. Isn't there a tendency toward harmony in all commodities, assuming it to be the same commodity, doesn't one try to get the same price as the other? A. I think that is generally true.

Q. If there be a cut or reduction it is some particular instance either to try to get acquainted with a man and introduce the personal equation, or something of that kind, isn't that true? A. That is it.

8053 Q. Now, in case of an abnormal demand, such as I think you can recall existed in the year 1912, did not the retailers advance the prices in the territory with which you are familiar, very considerably? A. In certain cases, yes.

Re-Direct Examination by Mr. Boles:

Q. As I understand you, the dealers in your territory are satisfied as to the mine prices, they are satisfied as to their service, they have no complaints as to the treat-
8054 ment, but some of them are rather inclined to question the freight rates?

Mr. Machen: Objected to as leading and otherwise.

A. I think as a general statement, that is correct.

Q. If the dealers were convinced by the Interstate Commerce Commission, or any other State Railroad Commission, that the freight rates were not unreasonable, they would have no complaints would they beyond
8055 that? A. I think not. With regard to the sale of the coal, I think that the complaint that the retail trade will have from this time on will be largely centered upon the preparation of anthracite coal and the delivery of it, the service in other words. I think there is a keener competition to-day amongst the anthracite trade on the question of preparation and service than there has ever been before. I think it has largely narrowed down to that, and that is going to be one of the reasons why the retail trade goes from one large shipper to the other, be-
8056 cause he finds in some cases, and it is a fact in some cases, he gets better deliveries and more dependable service and better preparation.

Q. And as he finds that one railroad is giving him better service, or if he finds that one producing company is giving coal that is a little better prepared, he shifts his orders from time to time? A. Yes.

Q. It all boils down then, doesn't it, to the question of a dissatisfaction in freight rates by a few of the concerns?

Mr. Machen: Objected to as leading and otherwise objectionable. 8057

A. I think that is the bone of contention.

Re-Cross Examination by Mr. Machen:

Q. Will you tell me how the coal dealer on the line of the Lehigh Valley Railroad at Newark, New Jersey can get coal from the Lykens Valley region if he wants it? A. I don't know. I am not familiar with Newark. I stated that our membership is only south of Trenton in 8058 New Jersey.

Q. It does not go north of Trenton? A. I should think they could get Lykens Valley coal, however.

Q. You should think they could? A. Yes.

Q. But you don't know? A. I know the Reading ship Lykens Valley. I don't know——

Q. You know the Reading ships Lykens Valley, but you don't know how this dealer could get it, or whether the price would be prohibitive? A. No, I don't know.

Q. Suppose we have a dealer of anthracite coal at 8059 Phillipsburg, that is in your territory, isn't it? A. Yes.

Q. Situated on the line of the Lehigh Valley Railroad, the Lehigh Valley Road being the only road which has direct connections with his yard? A. Yes.

Q. Can you tell us how he could get coal from the Lykens Valley Region? A. Not unless he could get it over the Reading. You are talking about a very exceptional case, you know. The demand for Lykens Valley coal is very small. In some districts they don't use it at all. In other localities they use a great deal of it. It is a 8060 matter of custom.

Q. Will you tell me how that dealer at Phillipsburg could get coal from the collieries of the Lehigh Coal & Navigation Company? A. No.

Re-Re-Direct Examination by Mr. Boles:

Q. Well, as a physical matter it is possible to handle coal from collieries of the Lehigh Coal & Navigation

8061 Company to a dealer located at and having a track connection with the Lehigh Valley at Phillipsburg? A. Yes, it is physically possible.

Q. It would go down how? A. I suppose down to Allentown and over that way, or come over the Lehigh and New England, and that connection I think is in Bethlehem, isn't it, with the Jersey Central.

Q. It is just a question of the physical handling of the cars, isn't it? A. Yes.

8062 Re-Re-Cross Examination by Mr. Machen:

Q. There would be a question of the physical handling of the cars if the rates were the same, but the rates may be prohibitive? A. That is possible.

Q. You don't know anything about that? A. I don't know anything about that specific case.

Q. As a matter of fact, you don't know anything about freight rates whatever, do you? A. I don't know anything about the differences in freight rates to a given point, no.

8063 Q. You don't know whether a dealer at any given point could get coal over one railroad or another, or whether the difference in rates would be prohibitive? A. No, I don't know that.

By Mr. Boles:

Q. If a dealer at Phillipsburg who was a member of your association, having a direct connection only with the Lehigh Valley, wanted coal of the Lehigh Coal & Navigation Company and found that he could not get it

8064 because of prohibitive freight rates, would it be within the purview of your articles of association and by-laws that he should register his complaint with you?

Mr. Machen: Objected to as immaterial.

A. Yes.

Re-Cross Examination by Mr. Warren: 8065

Q. If you don't know that the rate might be prohibitive there, then when the counsel asked you it might be prohibitive and you said it might, you might just as well have said it might be perfectly equitable and fair, might you not? A. Yes.

Q. Now, assuming the Lehigh Coal & Navigation Company has collieries on the line of the Lehigh & Susquehanna Division of the Central Railroad of New Jersey; assuming that the Central Railroad of New Jersey runs through from Easton to Phillipsburg—does it not? A. 8066 Yes.

Q. Crosses the Delaware River which divides Easton from Phillipsburg? A. Yes.

Q. Phillipsburg being situated on the east side or the New Jersey side of the Delaware River opposite Easton? A. Yes.

Q. Do you happen to know how close to the tracks of the Central Railroad of New Jersey, the tracks of the Lehigh Valley are situated as they cross the river, and for a short distance beyond through the town of Phillips- 8067 burg? Are they not very close together? A. Yes, they are.

William R. Coyle, a witness called in behalf of the Lehigh Valley Railroad Company, being first duly sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. What is your business? A. In charge of sales for 8068 Weston, Dodson & Co., Inc.

Q. Weston, Dodson & Co., Inc., sell for what collieries? A. They are sales agents for the Beaver Brook Colliery, the Morea Colliery and the Weston Colliery, all three of which have Lehigh Valley Railroad connections.

Q. The Beaver Brook colliery is operated by C. M. Dodson & Company? A. Yes. Charles M. Dodson & Co.

Q. Morea? A. Morea by the Dodson Coal Company.

8069 Q. And what is the other one? A. Weston; that is a new colliery, it may not show on that list.

Q. Where is that located? A. Shenandoah.

Q. Is that on the Lehigh Valley? A. Yes. It is a new colliery, probably it does not show on that list. The Weston is operated by the Locust Mountain Coal Company.

Q. Approximately what tonnage in a year do you ship over the Lehigh Valley Railroad? A. 200,000 tons, a little more or a little less.

8070 Q. Do you sell a large portion of that, or what proportion do you sell of it at line points of the Lehigh Valley? Just give us a rough estimate, if you will? A. About 60 per cent. I should say.

Q. At line points? A. At line points.

Q. And will you name some of your competitors at those line points? A. The Mill Creek Coal Company is one, the Lehigh Valley Coal Sales Company, the Plymouth Coal Company, the Estate of J. S. VanWickle, and Pardees.

Q. Whitney and Kemmerer? A. Whitney & Kem-
8071 merer, and Madeira, Hill & Co., also I think have a colliery. There are a number of others.

Q. Now, are you familiar with the mining operations at Beaver Brook? A. In a general way only.

Q. Can you tell us just what the track connection with the Jersey Central consists of? Can you describe that layout there? A. No.

Q. Does the Jersey Central get under the breaker? A. The Jersey Central reaches the breaker, but the tracks to the breaker, I believe, belong in a measure to the col-
8072 liery. That is they are joint tracks actually under the breaker belonging to both roads, or used by both roads, but I am not entirely familiar with the conditions.

Q. Are you familiar with the conditions at Morea's? A. Not as to which track belongs to which road.

Q. Would it be a practicable thing to have the engines of two different railroads pulling cars from the breaker, if they were loaded? A. I don't know of any breaker where the engine has to actually pull the cars out from under the breaker.

Q. You mean that they come down—— A. They go 8073
down hill to a distributing yard.

Q. Go down on a gravity track? A. Yes.

Q. What is the layout in respect of the so-called tail tracks at the Beaver Brook colliery? A. My connection with the company is almost entirely selling. I don't get to the colliery twice a year, and I am not really competent to answer along those lines.

Q. How long have you been a shipper over the Lehigh Valley Railroad? A. I should judge for nearly fifty years the corporation and before that the firm of Wes- 8074
ton, Dodson & Co., and before that Weston, Dodson & Brother.

Q. Have you ever been discriminated against by the Lehigh Valley Railroad? A. My connection with the company runs back only five years, so that I will answer for that period and say parenthetically that we are objecting to tariffs as approved by the Interstate Commerce Commission, but so far as I know have no objection to register as to the fair application of the tariffs as approved.

Q. Now, at this point, I wish you would explain the 8075
nature of the complaint which your company jointly with the Markle Company filed with the Interstate Commerce Commission.

Mr. Machen: Objected to.

Q. Are you familiar with it? A. I am.

Q. You may answer.

Mr. Machen: The complaint speaks for itself.

8076

The Witness: The complaint alleges that privileges afforded at tidewater are not in accordance with similar privileges afforded by other roads, and that under the tariff they are unfair to ourselves as compared with the Lehigh Valley Coal Sales Company; also that the freight rates from various collieries in the Wyoming region as ordered by the Interstate Commerce Commission in the Meeker case are unfair compared with the rate particularly from our own colliery and compared with similar rates charged by other roads for similar hauls.

6077 Q. Now, as to the storage end of the complaint, will you explain the conditions in respect of the storage of coal at Perth Amboy which existed before the storage tariff was cancelled in June, 1913? A. Prior to the cancellation of this tariff there was afforded to all shippers limited free storage, which was included in the rate paid to tidewater. Since the cancellation of that privilege there is no privilege of free storage accorded to any one that I know of.

6078 Mr. Boles: I ought to say at this point that the hearing in that case is about closed, but in any event, anything that you say here will not be used against you in that case.

The Witness: This, may I ask, is another court of record, anyhow, is it not?

Mr. Boles: Yes. My impression is that the hearing in that case is closed, but at any rate what you say here will not or cannot be used against you in that case by me.

6079 The Witness: May I say in addition to my answer to that last question, that the statement that there was no free storage accorded any one, has in mind the evidence adduced by the Lehigh Valley Railroad that the storage plants were owned by or leased by the Lehigh Valley Coal Sales Company.

Q. At South Plainfield? A. Yes, or elsewhere.

6080 Mr. Warren: At Perth Amboy, you mean?

The Witness: No, there is no storage at Perth Amboy that I know of, no free storage.

Q. Now, will you state again the substance of the complaint which you have pending before the Interstate Commerce Commission, so far as it concerns the charge of discrimination on account of the storage of coal?

Mr. Machen: Objected to as before, because the complaint is the best and only evidence of what it contains.

Mr. Boles: When the complainant is here?

Mr. Machen: Yes, when the complainant is here.

The Witness: That complaint is based on existing 8081
tariffs, and not to any extent on the application of those tariffs, and the discrimination, if any, which we allege, occurred when the storage plants, with the exception of Perth Amboy, were sold or leased to the Lehigh Valley Coal Sales Company, and the one exception, Perth Amboy, was discontinued.

Q. To what extent did your company store coal at Perth Amboy prior to June 1, 1913? A. None at all to any appreciable extent.

Q. Would it be advantageous to your company to 8082
lease land in the vicinity of Perth Amboy or between Perth Amboy and South Plainfield for the purpose of storing your coal in transit? A. That is a question that is hard to answer. It depends on price and assurance as to continuing freight rates in effect, which would provide for stoppage in transit.

Q. Would your answer be the same if the Lehigh Valley offered a lease on exactly the same basis of rental as the lease to the Lehigh Valley Coal Sales Company? A. I don't know the basis of that lease. I suppose it 8083
would, otherwise the Lehigh Valley Coal Sales Company would not have taken it up, but we really don't know the basis of that.

Q. Well, the basis of the rental is four per cent. of the valuation, the tenant to pay the taxes and maintenance and insurance? A. That question is a little bit hard to answer on that basis. It depends on size of storage plant and so many other factors that it is almost impossible to answer.

Q. Now, do you buy coal in the Wyoming region? A. 8084
Yes.

Q. From whom? Don't state if you don't want to? A. On the Lehigh Valley do you mean?

Q. Yes. A. I can almost say no. We buy a little from the Plymouth Coal Company at times.

Q. What was the effect on the price of coal at New York and vicinity after the rate of $1.40 was put into effect following the opinion of the Interstate Commerce Commission in the Meeker case? A. There was no effect on the price at New York, possibly on account of the

8085 small aggregate tonnage involved, but certainly, whatever the cause, there was no change in price, due to that change in rate.

Q. Will you state the substance of your complaint before the Interstate Commerce Commission in respect of the rate feature of it? In other words, do I state it correctly when I say that the substance of the complaint in that case, that is, the case of G. B. Markle & Co. and others, of which you are one of the parties, as to the rate feature of it is that you want the Lehigh region to
8086 be on the same rate basis as the Wyoming region, irrespective of what the rate by itself may be? A. May I have that again.

The question was read as follows:

Q. Will you state the substance of your complaint before the Interstate Commerce Commission in respect of the rate feature of it? In other words, do I state it correctly when I say that the substance of the complaint in that case, that is, the case of G. B. Markle & Co. and others, of which you are one of the parties, as to the
8087 rate feature of it is that you want the Lehigh region to be on the same rate basis as the Wyoming region, irrespective of what the rate by itself may be? A. If you will say the same rate comparing the work from the two regions, I can answer yes.

Q. Comparing the work? A. The work done in the haul from the two regions.

Q. What do you mean by that? A. Our contention was that actually the haul from the Lehigh region to tide water was a less expensive proposition for the railroad as compared with the Wyoming region.

8088 Q. And in that respect you endorse the testimony, I presume, of Mr. Jessup, who appeared in that case? A. Yes.

Q. Now, then, departing from the rate matters, have you any complaint as to treatment given you as a shipper by the Railroad Company? A. I have none at all. My early statement that the Lehigh Valley lived up to the terms of its tariffs, in effect, was a fair one I believe. I testified in the other case we had practically suffered no diminution of car supply and generally speaking the

haul to tide water and elsewhere is as good for us as 8089
for any other independent shipper, certainly. The Lehigh Valley Coal Sales Company's connections with the Lehigh Valley might, perhaps, as a big shipper, move their tonnage faster, but I have no evidence that it would.

Q. When you speak of the connections between the Lehigh Valley Coal Sales Company, and the Lehigh Valley Railroad, what do you mean? A. I mean the old connection of association and affiliation before the steps taken to divorce the two. The line of cleavage could probably not be positive and immediate, but it probably 8090
is increasing the distance between the two corporations as time goes on.

Q. Have you seen any evidence in any way of preferential treatment afforded by the railroad to the Coal Sales Company? A. I have not, always with the reservation that our kick was against the tariff.

Q. And you are speaking of your complaint before the Commission? A. Yes.

Q. You spoke of the Weston colliery, which, I notice is not mentioned on Lehigh Valley Railroad Exhibit 54. 8091
When did that colliery begin to operate? A. In April or May of this year.

Q. And where is it located? A. Just west of the town of Shenandoah, just northwest of the town of Shenandoah.

Q. Does it have direct connection with the Lehigh Valley Railroad? A. Yes.

Q. Does it connect with any other railroad? A. Not directly, but through a shipping agreement with the two roads, it connects with the Pennsylvania Railroad.

Q. What is the agreement? A. The Pennsylvania ab- 8092
sorbs the Lehigh Valley's switching charge in its through rates of freight to most of the points on the Pennsylvania.

Q. Is there an active and keen competition in respect of the sale of coal at line points on the Lehigh Valley Railroad? A. I think so, without any question.

Q. Do you find that your small sizes come in competition with bituminous coal? A. They are used for much

8093 the same purposes, and therefore they must come in competition, although not always at the same plant.

Q. That is, one plant may adjust its grates for one kind of coal? A. Yes, it will be built for either bituminous or for anthracite.

Mr. Boles: I offer in evidence the petition filed by G. B. Markle, Pardee Bros. & Co., Inc., and Weston, Dodson & Co., *vs.* The Lehigh Valley Railroad Company, in the case before the Interstate Commerce Commission, Docket No. 5917,
8094 which petition was filed March 2nd, 1913.

(Marked **Lehigh Valley Railroad Exhibit No. 91.**)

Mr. Warren: I desire to cross-examine the witness.

Cross-Examination by Mr. Warren:

Q. Looking at the petition in evidence filed by the corporation in which you are interested, as I understand it, together with others, in the fourth paragraph I notice
8095 that one of your complaints is that the Lehigh Valley Railroad has put in a new tariff which really meant from the date of the imposition of that tariff they would do away at Perth Amboy with the free handling of anthracite that your concern might ship or other shippers, theretofore done by them at their expense. Isn't that right, and that is the basis of your complaint as to the storage matter? A. The complaint is in evidence as an exhibit. I think that that is a fair statement of it, but I don't want, with the complaint in evidence, to be bound
8096 in any way by that statement of the case. I think the complaint itself is the best evidence of that.

Q. That is your understanding? A. In a general way, yes.

Q. In other words, prior to the publishing of the tariff, effective June 1st, 1913, prior to that the Lehigh Valley Railroad, as I understand it, would take your coal if you were a shipper, to Perth Amboy, take it out of the cars and store it in bins for you, and transfer it to barges for you, all at the expense of the railroad company without charging a single cent to you as a shipper?

Mr. Machen: That is objected to as a leading 8097
question addressed to a witness called for the defendants.

Mr. Warren: To which I reply that he is not called for the defendants, and he was expressly called on behalf of the Lehigh Valley Railroad, one of the defendants.

Mr. Machen: I will modify that then.

Mr. Warren: He is not called by me here, and therefore I have the right to ask leading questions, if there is any propriety in objecting to a 8098
leading question anyway.

Mr. Machen: Note an objection on behalf of the Government to any examination, proper only as cross-examination, by the counsel for the Coal Sales Company, of a witness called by the defendant, the Lehigh Valley Railroad Company.

The question was read as follows:

Q. In other words, prior to the publishing of the tariff, effective June 1st, 1913, prior to that the Lehigh Valley Railroad, as I understand it, would take your coal if 8099
you were a shipper, to Perth Amboy, take it out of the cars and store it in bins for you, and transfer it to barges for you all at the expense of the railroad company without charging a single cent to you as a shipper? A. They would, without charging anything except the published rate to tide water, which included this service.

Q. Then your complaint was as to the publishing of the tariff of June 1st, 1913, which had to do only with Perth Amboy, did it not? A. I will have to look at the tariff.

Q. Well, look at the complaint? A. I think there were 8100
other matters mentioned in that tariff except Perth Amboy.

Q. No, but I mean to say your complaint only had to do with the treatment at Perth Amboy. Just examine it and see. That is correct, is it not? A. That is true, but your parenthetical remarks were that the tariffs had to do only with that. That is what confused me.

Q. I will accept our amendment, and pardon me for confusing you. I never saw the tariff, but what I meant

8101 to ask you is whether it is not true that your complaint, with the other gentlemen associated with you was as to the effect of that tariff as published upon shippers at Perth Amboy? A. Exactly.

Q. And nowhere else, as to that tariff, I mean, so far as your complaint is concerned? A. I believe not.

Q. And that tariff in your complaint you alleged was excessive, unjust, unreasonable and discriminatory, did you not? A. Yes.

Q. Do you know who drew this complaint for you? A.
8102 Mr. William A. Glasgow was leading counsel, and associated with him was Mr. Robert D. Jenks. Which one drew the complaint I am not certain.

Q. One of the two drew it? A. Yes, sir.

Q. Did you yourself participate in any conferences with the counsel to furnish them facts upon which to draw it? A. Yes, sir.

Q. You yourself did? A. Yes, sir.

Q. Did you suggest to them the charge appearing in Paragraph 8 alleging "The close relationship existing between, if not the substantial identity of the Lehigh
8103 Valley Railroad Company, Lehigh Valley Coal Company and Lehigh Valley Coal Sales Company." Did you suggest that to counsel?

Mr. Machen: Do you intend to interrogate a witness as to what his confidential communications were to his own counsel?

Mr. Warren: I don't intend to interrogate him as to confidental communications, no; I intend to ask him that question.

The Witness: The witness will not answer that
8104 question, if you may accept the hint, because it is beyond the power of my recollection to testify now whether that was suggested by me or not.

Q. That is all I want to know. Now, I understood you to say, and I find that it is noted in the complaint, that the defendant, Lehigh Valley Railroad Company has leased to Lehigh Valley Coal Company its entire coal storage plant at South Plainfield, New Jersey, and that therefore the Lehigh Valley Coal Company has pro-

vision, through the action of defendant, defendant being the Lehigh Valley Railroad Company, for the storage of its coal destined to Perth Amboy, New Jersey. Are you not familiar with the fact that the Lehigh Valley Coal Company sublet or assigned the lease which it had from the railroad company of the storage plant at South Plainfield on the 1st of March, 1912, and that the Lehigh Valley Coal Company has had nothing to do with that storage plant in any way since that time? A. I think that is a matter of evidence in that particular case. 8105

Q. Now, do you know that the Lehigh Valley Coal Sales Company paid by way of rental for that storage plant at South Plainfield upon a valuation made by a Mr. Wilgus, a consulting engineer in the city of New York, by way of rent, taxes, maintenance and insurance, seven and one-half per cent. upon the valuation of Mr. Wilgus' estimation? 8106

Mr. Machen: Objected to as not only leading, but misleading.

The Witness: Mr. Examiner, may I suggest that in answer to these questions, and not being represented by counsel, it is hardly fair,—with the best intentions in the world to bring out the facts in the case,—it is hardly fair to ask me to review either the facts or the evidence in this case, which is already a matter of record. The record stands for itself in that particular case, and the complaint is here as an exhibit in this case, and will speak for itself; either cross-examination or direct examination, unless I ask to be represented by counsel, is hardly fair, pending the decision in the other case. 8107

Q. Now, Mr. Coyle, the question I asked you was whether you had had information that the Lehigh Valley Coal Sales Company paid by way of a rental for the South Plainfield plant 7½ per cent. of the valuation of that plant by a consulting engineer in the city of New York by the name of Wilgus. Has that got anything to do with the evidence or the trial, or your participation in the trial of the complaint to which you have referred before the Interstate Commerce Commission? If so, tell me? 8108

8109 Mr. Machen: I object to the statement, which misquotes the evidence in this case, as there has been no evidence to show that such amount has been paid; and is not pertinent, if it be cross-examination, to any matter as to which the witness was examined on direct examination, and that therefore the witness is not obliged to answer the question.

Mr. Warren: My answer to the counsel for the Government's statement that it misquotes evidence, is a reference to Sales Company's Exhibit
8110 No. 49 in evidence in this case.

Mr. Machen: I renew the objection.

Mr. Warren: I am neither misquoting the evidence nor mis-stating it in any respect.

Mr. Machen: You are.

Mr. Warren: And it is most fatuous to suggest such a thing. I am confining myself to facts in the record, which have been proven over and over again.

8111 The Witness: My answer to that is only that the matter is without the scope of my own knowledge, except as I have heard it stated on the witness stand by witnesses for the Lehigh Valley Railroad Company, and my impression is substantiated by a lease accepted as an exhibit in the case.

Q. Will you kindly tell me about what tonnage of coal your corporation ships by the Lehigh Valley Railroad to Perth Amboy at the present time, or to points in eastern New Jersey, I will say? A. Any period of time? Daily
8112 or monthly?

Q. No, we will say for the last year, so as to get some definite time? A. The Lehigh Valley Railroad carries for us about 200,000 tons a year, and of that 75, possibly 80 per cent. moves eastward.

Q. Would you say it comes to the vicinity, we will say, of Newark or South Plainfield or Perth Amboy or Jersey City? A. Seventy-five per-cent.

Q. Of this tonnage? A. No.

Q. How much of it was shipped to Perth Amboy? A. 8113
That is a matter of bookkeeping record. That is hard to answer, except as an approximation. I should say Perth Amboy took 40,000 tons of coal last year, probably.

Q. Did you desire last year to store that 40,000 tons? A. Do you mean prior to the publication of this tariff?

Q. No, I mean—I will say after the publication of the tariff? A. There had been several times when the renewal of the limited free storage in effect would have been exceedingly welcome to us. 8114

Q. Could you have stored that advantageously at South Plainfield, assuming you had had storage there? A. That is a hypothetical question that is impossible to answer, unless you know storage conditions.

Q. All right. A. I mean the conditions under which storage would be extended. Supposing conditions were similar to the conditions existing at Perth Amboy, yes, storage there would have been very acceptable.

Q. If you could have got it without charge? A. Yes, sir, or even with moderate charge.

Q. Supposing you had had to pay, say, seven or eight 8115
per cent. upon the valuation of the facilities which you utilized for such storage, would you have availed yourself of them, if they were offered to you?

Mr. Machen: I object to it, unless the——

The Witness: That question positively cannot be answered. No one can answer that question.

Q. Well, then, your complaint comes to this, that what you wanted of the railroad was free storage of coal at such times as you desired, and in such quantities as you 8116
desired, at Perth Amboy, as, I understood you to say in answer to a question by Mr. Boles, you understood had been granted by other anthracite railroads to its shippers, is that right? A. No, sir, I did not say that. I said our complaint alleged that other roads gave more service for the same price than did the Lehigh Valley, and that the new tariff was in effect increasing the rate because it removed a privilege previously existing, and we wanted, not the Lehigh Valley to be put on the same

8117 basis as any other road, but to return to us a privilege taken away by this tariff and put us in the same status as formerly.

Q. Yes, in other words, what you wanted was that the Lehigh Valley Railroad Company should be compelled to furnish you free limited storage, as you called it, in bins at Perth Amboy?

Mr. Machen: I object to interrogating the witness as to what he desired to obtain by his petition to the Interstate Commerce Commission be-
8118 cause the petition itself speaks for itself and is the best evidence of what the complainant wanted.

Q. What is your answer? A. It was not free storage we wanted, but storage included in the rate to tidewater.

Q. Yes, and without any charge whatever for the use of the facilities, that is a fact, isn't it? A. Well, it is a distinction without a difference.

8119 Cross-Examination by Mr. Machen:

Q. Your Beaver Brook colliery has connection, I believe, both with the Lehigh Valley Railroad and the Central Railroad of New Jersey, has it not? A. The colliery ships over both roads on the same basis; whether the physical connection belongs to the railroad or the colliery I am not sure.

Q. You explained that in your direct testimony? A. Yes.

Q. But I mean to say you ship from the colliery some
8120 coal over one road and some over the other? A. Yes, sir.

Q. Do you ship over both roads to tidewater at New York? A. Yes.

Q. By what circumstances are you guided in determining which railroad to use? A. Prior to the publication of this tariff we used the Lehigh Valley more extensively on account of the privilege of free storage; since that time we have continued to use the Lehigh Valley largely on account of our suit and our expectation that we would be reimbursed for the alleged excessive rate.

Q. You do use the Central to some extent? A. Yes, considerably. 8121

Q. Why? A. On account of car supply at the moment, or on account of being able to get other sizes to load with something we are producing at Elizabethport—I mean to load at Elizabethport with something that we are producing that, perhaps, we are unable at the moment to get at Perth Amboy.

Q. Do you find any advantage in having connection with two railroads, and being able to ship over either one or the other? A. Without any question. The railroads compete for the business there, just as we compete for it. 8122

Q. Yes, your colliery at Morea is also connected with two railroads, isn't it? A. With limitations. We ship over the Lehigh Valley only to certain points owing to the fact that our leasehold is partly a Reading leasehold.

Q. And contains a covenant binding you to ship—— A. (Interrupting.) Over the Reading Road in consideration of the trackage in there, etc. 8123

Q. You have no lease from the Lehigh Valley Coal Company, have you? A. No, I believe not.

Q. Do you know whether or not such covenants are generally observed when found in leases in the coal mining regions? A. Do you mean to say the covenant regarding shipments?

Q. Yes. A. It seems to me it is one of the considerations moving with the leasehold which would probably void the lease if violated.

Q. Yes. Did you purchase the coal lands which your colliery at Weston serves recently, or have you had them for some time? A. The land is owned by the Girard Estate, and we hold a leasehold on the land. 8124

Q. Did you acquire the leasehold recently? A. Yes.

Q. And before doing so, did you make any arrangement as to the shipments of coal from the colliery? Did you tell them what shipments could be made? A. Yes, sir. I know only by hearsay, but my evidence is I think authentic. There was no effort made for connecting a road until after the leasehold was acquired, because there

8125 were at least three railroads within reach of the point where the breaker could be located.

Q. And you thought you would be able to get sufficient competition between the three of them? A. I don't think there was ever any question about that.

Q. Did the railroads make connections themselves or did you have to do it at your expense? A. To a certain point. Mr. Grier knows that. It was beyond the scope of my activity except as I incidentally saw it, but my impression is that we have an agreement with the rail-
8126 road company under which they construct to a certain point, and from that they construct at our expense. They construct to a certain point at their expense and beyond that they construct at our expense. That, as Mr. Grier interpolated, is correct, because we wanted to own and control the tracks under our own breaker and on our own property, but wanted the use of their organization to put through the uniform unit.

Q. Did the Pennsylvania Railroad build a connection in order to reach this Weston colliery? A. They did not, but they agreed to reimburse the Lehigh Valley, I believe,
8127 to the extent of 30 cents per ton for handling cars from the breaker to the Pennsylvania tracks at Shenandoah Junction, apparently considering the latter charge as less expensive than building tracks in there as, I believe, the property was fairly open to both roads.

Q. This thirty cent charge is in the nature of a switching or lateral charge, is it? A. Yes.

Q. Then you ship directly over the Pennsylvania Railroad? A. We use a Lehigh Valley form in manifesting on account of their haul on it, and they turn it over to
8128 the Pennsylvania, and the Pennsylvania weighs the coal, under present conditions, just as though it were an initial shipment on their road.

Q. And then absorb the switching or lateral charge? A. Reimburse the Lehigh Valley for the switching charge, and absorb it in their through rate.

Q. Do you reach all points on the Pennsylvania line, or can you use this only for certain points? A. You can really reach all points except that the Pennsylvania system is practically split in half by the mountain through the region there, and shipments from the Shamokin side

take a lower freight rate to many points than do ship- 8129
ments from the eastern side or southeastern side of that mountain, and we are on the southeastern side, so while our freight rate in effect covers shipments practically to any points on the Pennsylvania, we don't get the low rate, of course, to all points.

Q. You sell your own coal, do you? A. Yes, sir.

Q. At points along the line of the Lehigh Valley Railroad are you able in normal times, to realize any higher price than that charged for coal by the Lehigh Valley Coal Company or the Lehigh Valley Coal Sales Com- 8130
pany? A. Yes, on some sizes at some times.

Q. In abnormal times? A. Yes.

Q. In times of shortage, due to strikes or something of the sort? A. Yes, but not altogether.

Q. Can you realize as much as the Lehigh Valley Coal Sales Company in normal times, approximately as much? A. I have no way to answer that from statistics because their returns are not in my mind, but substantially I figure that we can get as much for equal quality and preparation as they can. Some sizes we consider as being 8131
better than some of their similar sizes, and I guess we get more for it.

Q. Do you come in competition with the coal from the Bernice region? A. Not as a considerable factor in that part of the country. The Bernice coal, I judge, goes north and west into New York State largely. That is my impression as a salesman, not as—

Q. (Interrupting) How about the Lykens Valley coal, do you come in competition with it? A. On the Reading Road, yes, and occasionally when we get into Pennsyl- 8132
vania territory, but Lykens coal is, generally speaking, so much higher priced coal that it does not come in as a factor in our territory.

Q. How much higher price does it command than the ordinary anthracite coal? A. Sometimes I should say a dollar a ton at the mines.

Q. And do you know whether the Bernice coal commands— A. (Interrupting) A very much lower price, I should say.

Q. You mean a much lower price than the ordinary anthracite? A. Ordinary anthracite.

8133 **Wilson Kishbaugh**, a witness called on behalf of the Lehigh Valley Railroad Company, being first duly sworn, testified as follows:

Direct Examination by Mr. Boles:

Q. What is your business? A. General sales agent, Mill Creek Coal Company.

Q. At what points do you market your anthracite? A. Well, from the coast, west to the Mississippi River.

Q. And at line points on the Lehigh Valley Railroad? A. Yes.

8134 Q. About how much tonnage do you ship over the Lehigh Valley Railroad in a year? A. I should say in the neighborhood of 75,000 tons.

Q. And is that all from the Mill Creek Coal Company? A. Yes, sir.

Q. As a shipper of anthracite along the line of the Lehigh Valley Railroad have you at any time had complaint to make as to discrimination or preferential treatment; in other words are you satisfied with your treatment by the Lehigh Valley Railroad? A. Yes, I know

8135 the Lehigh Valley treats us very well, and we get along with them very nicely.

Q. The Government's petition in this case alleges that at certain line points on the Lehigh Valley Railroad the Lehigh Valley Coal Sales Company dominates the market for the sale of anthracite. What have you to say as to that charge? A. I don't know the point. If we want any business on the line of the Lehigh Valley Railroad we usually go after it.

Q. In other words, do you compete freely along the

8136 line of the Lehigh Valley Railroad? A. Yes.

Q. And with whom? Just state some of the dealers with whom you do compete? A. Weston, Dodson & Co., Whitney & Kemmerer, Lincoln Hill Coal Company, Lehigh Valley Coal Sales Company, Baker Brothers, Allentown.

Q. Do you sell to the various dealers whose yards are located in conjunction with trestles on the Lehigh Valley Railroad? A. Yes, sir.

Q. Do you ship to Perth Amboy? A. Not that point.

Q. You do not? A. No.

Q. Are all your sales made at line points? A. I should 8137
say 95 or 98 per cent. were made on the line points. We have given up tide-water almost entirely.

Q. Did you use to ship to Perth Amboy? A. Yes, we did at times. We have shipped but very little there since the strike in 1902 and 1903.

Q. Why? A. We get better prices at other places.

Q. Is there a keen and active competition as to the sale of anthracite at points on the Lehigh Valley Railroad A. Yes.

Q. Have you any relation in any way with the Lehigh 8138
Valley Railroad other than as a shipper over its lines? A. That is all.

Q. Would you say that the natural market for the distribution of anthracite which originated at points on the Lehigh Valley was at line points on the Lehigh Valley?

Mr. Machen: Objected to.

The Witness: No, I would not say that, because the
line points of the Lehigh Valley could not take the 8139
product.

Q. You mean they could not take it all? A. Oh, no.

Q. Well, to the extent that they can take it, is it the natural market? A. Well, if they cannot take it of course it is not the natural market.

Q. If they cannot? A. If they cannot take it. They can not take all the coal shipped over the Lehigh Valley Road, is that what you mean?

Q. You mean the demand at the line points is less than the supply? A. Oh, yes.

8140

Cross-Examination by Mr. Machen:

Q. What collieries do you operate? A. We operate one colliery—the tariff sheets of Lehigh Valley call it the Middle Lehigh colliery, and the tariff sheets of the Pennsylvania Railroad call it the New Boston colliery.

Q. You have access at your colliery to both these roads? Yes.

8141 Q. You stated you thought that you shipped about 75,000 tons a year over the Lehigh Valley? A. In that neighborhood, yes.

Q. The answer of the Lehigh Valley Coal Sales Company states that in the calendar year 1912 the Middle Lehigh Coal colliery shipped 55,054 tons over the Lehigh Valley Railroad and 33,615 tons over the Pennsylvania Railroad. Does that agree with your recollections? A I should say those figures are rather small, although possibly it may have been.

8142 Q. That was a strike year, wasn't it? A. Yes, possibly that was it. The tonnage was rather small as I remember it.

Mr. Boles: Your recollection is that they are small?

The Witness: Those figures are small.

Q. According to the Lehigh Valley Railroad Company's Exhibit 54, your colliery shipped 69,497 tons over the Lehigh Valley Railroad in the year ending June
8143 30, 1913, is that correct in accordance with your estimate? A. Yes, in the neighborhood of 70,000 or 75,000; I cannot give the exact figures.

Q. I suppose your object of course is to sell your coal at the highest price you can get for it? A. That is what we are in business for.

Q. Do you find you are able at points along the line of the Lehigh Valley Railroad to get practically as much for your coal as the Lehigh Valley Coal Sales Company gets for its coal? A. About the same price, yes.

8144 Q. Are you in normal times able to sell for more than they receive for their coal? A. No, I cannot say that we are. We never try. We usually try to get the circular price and stop there, except in the case of the strike in 1902.

Q. By the circular price you mean the price which the Lehigh Valley Coal Sales Company circular states? A. The Lehigh Valley and the Reading and Weston, Dodson & Co., Lincoln Hill Company, Whitney & Kemmerer, and our own.

Q. They are all the same, aren't they? A. I guess they are. 8145

Q. Do you know which ones of these various companies you have named issue the price list first, or whether they are issued simultaneously? A. No, I do not.

Q. Can you tell us why you were unable to realize as much at tide water for your coal as at other points, line points? A. The difference in price. The same price is not realized at the mines for different reasons. Deduct the freight rates, the expense and wastage and you will not realize as much at the mines as if you sold at line points going west. 8146

Q. You get better prices there? A. Yes.

Cross-Examination by Mr. Warren:

Q. Do you know the gentleman whose name is attached to this letter, I think it is T. G. Jones? A. I think it is T. G. Jones, he was general manager.

Q. Isn't that the signature of T. G. Jones, the General Manager of your company? A. It looks very much like it. 8147

Q. Well, you would say it was, would you not? A. Yes.

Q. And doesn't that paper signed by him show the tonnages shipped over the Lehigh Valley Railroad exactly as stated upon page 9 of Lehigh Valley Coal Sales Exhibit 1 which I now show you, namely, Lehigh Valley 55,054 tons; your statement is 55,053 tons? A. Yes.

Q. And Pennsylvania Railroad your general manager's statement is 33,615 tons and 17 hundredweight, and this is 33,615, without the hundredweight on, isn't that so? A. I don't know where he got that statement. 8148

Q. I am asking whether the figures are not the same on Mr. Jones' statement and on this page 9? A. Yes, except the difference of 53 and 54 it is about the same.

Q. The same? A. Practically the same.

Q. Without the hundredweight on the second figure? A. Yes.

8149 **William R. Evans**, recalled in behalf of Lehigh Valley Coal Sales Company, testified as follows:

Direct Examination by Mr. Warren:

Q. What is the capacity of the South Plainfield storage plant, if you know? A. As I recall it, in the neighborhood of 400,000 tons.

Q. To what extent do you at times utilize that capacity in storing Lehigh Valley Coal Sales Company coal? A. Practically its full capacity.

8150 Q. Have you under consideration a bill for car service rendered your company by the Lehigh Valley Railroad Company in connection with coal shipped to Wyoming storage plants? A. Yes, sir.

Q. Have you paid the bill? A. No, sir.

Q. Are you opposing the propriety of the bill? A. We are.

Q. Have you taken the matter up with your counsel in New York, Mr. N. W. Hacker? A. Yes, sir.

Q. Who is one of the gentlemen appearing as counsel for the company in this case, is he not? A. Yes, sir.

8151 Q. State briefly what that bill was by the railroad, and your opposition to its payment? A. It was a bill for car service for $229, as I recall it.

Q. What does this memorandum relate to, this letter from Mr. Hacker? Just state briefly what it is? A. For amount of car service alleged to be due the Lehigh Valley Railroad Company for the month of March at Wyoming storage.

Q. What year? A. 1914.

Q. There is a dispute between the companies as to the

8152 charge there? A. There is.

Cross-Examination by Mr. Machen:

Q. What do you say was the capacity of the storage plant at South Plainfield? A. As I recollect it in the neighborhood of 400,000 tons.

Q. How long has it been of this capacity? A. I could not say as to that.

Mr. Warren: You don't know when it was built?

The Witness: No, sir.

Q. Had it been increased recently? A. I don't think it 8153
has been extended, no, sir.

Q. You don't know? A. I am quite sure it has not, but it is possible to increase the capacity by what they call panning.

Q. What is that? A. Spreading the coal out farther.

Q. I don't quite understand what you mean? A. I don't know as I can explain it, but that is the term. I know we have been able to put in more coal than was originally stated as the capacity of the plant by certain methods of stocking it. 8154

William L. Summers, recalled, testified as follows:

Direct Examination by Mr. Warren:

Q. Have you prepared a tabulation, as I suggested, to be used in connection with Lehigh Valley Coal Sales Company Exhibit No. 49, which gives the exact rate of rental by way of a statement of percentage upon the Wilgus valuations at the plants carried to decimal 8155
points? A. Yes, sir.

Mr. Warren: I offer it in evidence.

(Marked **Lehigh Valley Coal Sales Company Exhibit No. 54.**)

Cross-Examination by Mr. Machen:

Q. In this Exhibit No. 54 you give the amount paid by the Coal Sales Company for rents, taxes, maintenance and insurance on the several premises during the calen- 8156
dar year 1913? A. Yes, sir.

Q. Why did you take the calendar year instead of the fiscal year? A. Why, I think when I was requested to prepare that statement, I think that my figures for the calendar year 1913 were under discussion, so that my memorandum read "Make details for calendar year 1913." Still I cannot recall just now what statement was under discussion, but that is the impression I got.

8157 Q. You have the figures, of course, for the two fiscal years which have elapsed since the incorporation of the Lehigh Valley Coal Sales Company? A. Yes, sir.

Q. What do you mean by gross amount of business transacted in Coal Sales Company Exhibit No. 53? A. The total amount of sales, gross sales made by the respective sales agents of the company.

Q. The gross sales? A. Yes.

Re-Direct Examination by Mr. Warren:

8158 Q. Does not that represent your entire business transacted when you say gross amount of business? A. Yes.

Q. Which are represented by sales, for that is your business? A. Yes, that is our business.

Q. But does it not also include coal handled on commission? A. That includes the total amount of sales no matter what kind of coal it is.

Q. No matter whether coal sold on commission or coal purchased and sold in that way? A. Yes.

Q. In other words, it is your total business transac-
8159 tions? A. Yes.

William J. Burton, recalled, testified as follows:

Direct Examination by Mr. Warren:

Q. Have you made an examination of the Lehigh Valley Railroad's stock list as of March 28th, 1914, and the Lehigh Valley Coal Sales Company's stock list as of April 9, 1914, so as to tell us what holdings the directors
8160 of the Lehigh Valley Coal Sales Company have in the stock of the Lehigh Valley Railroad Company as of March 28th, 1914? A. Yes, sir.

Q. Is this the statement? A. Yes, sir.

Q. That statement is correct? A. Yes, sir.

Q. Won't you tell us now in the first place does this list cover all the directors? Are these the names here of the directors of the Lehigh Valley Coal Sales Company? A. They are.

Q. Has Mr. William R. Evans, whose is the first name 8161
here, does he hold any stock in the Lehigh Valley Railroad Company? A. No, sir.

Q. How many shares of stock does he own in the Lehigh Valley Coal Sales Company? A. Two shares.

Q. And he holds no stock in the Lehigh Valley Railroad Company as of March 28th, 1914? A. None whatever.

Q. Now, Mr. F. L. Hine, I think, the counsel for the Government, asked you how many shares the railroad stock list showed that he owned on that day, and I think 8162
you said 2,000, didn't you? A. I think that is correct.

Q. How many shares does he own of the stock of the Lehigh Valley Coal Sales Company? A. 450.

Q. T. W. Lamont, how many shares of stock, if any, does he hold in the Lehigh Valley Railroad Company? A. None.

Q. How many shares of stock does he own in the Lehigh Valley Coal Sales Company? A. 375.

Q. H. G. Lloyd, how many shares of stock does he own in the railroad company? A. None. 8163

Q. How many does he own in the Sales Company? A. 250.

Q. Paul Moore, how many shares of stock does he own in the Railroad Company? A. 1,100 shares.

Q. How many does he own in the Lehigh Valley Coal Sales Company? A. 516.

Q. L. D. Smith, how many shares of stock does he appear to own in the Railroad Company? A. Ten shares.

Q. How many does he own in the Sales Company? A. 12 shares.

Q. G. N. Wilson, how many shares of stock does he 8164
own in the Railroad Company? A. None.

Q. How many in the Sales Company? A. Two shares.

Q. Now, all of these directors own in their own right, and hold certificates to the extent of their holdings that you have given me in the Sales Company stock, don't they? A. Yes, sir.

Mr. Machen: How do you know that?

8165 Q. Well, you issued certificates to them? A. Yes, sir.

Q. And they have not been returned for transfer in any way? They stand in their names on the books of the company as holders of stock, just like any other holders, don't they? A. Yes, sir.

Mr. Boles: And they are not endorsed back in blank.

Q. There are seven directors of the Lehigh Valley Coal
8166 Sales Company, are there not? A. Yes, sir.

Q. Four of them own no stock in the Lehigh Valley Railroad? A. That is correct.

Q. All own stock in the Lehigh Valley Coal Sales Company? A. Yes, sir.

Cross-Examination by Mr. Machen:

Q. Do you know in what firm Mr. Lamont is a partner, if any? A. He is I understand connected with the firm of J. P. Morgan & Co.

8167 Q. Well, won't you look at the stock list of the Lehigh Valley Railroad Company and tell us how many shares of railroad company stock stand in the name of J. P. Morgan & Company? A. 2,000 shares.

Q. How many shares of stock stand in the name of J. P. Morgan & Company on the books of the Lehigh Valley Coal Sales Company? A. 125 shares.

Q. Do you know with what firm if any Horatio G. Lloyd who is a director of the Sales Company, is connected? A. He is connected with the firm of Drexel &
8168 Company, Philadelphia.

Q. How many shares of stock did Drexel & Company hold on the books of the Lehigh Valley Railroad Company? A. 2,350 shares.

Q. And how many shares of stock in the Coal Sales Company did Drexel & Company hold on the date of the list which has been offered in evidence? A. 1,202 shares.

Q. Do you know how many shares of stock in the Railroad Company and Coal Sales Company respectively are held by directors of the Railroad Company?

Mr. Warren: I object to that until the witness is shown to know who the directors of the Railroad are. There is no evidence he has any knowledge of that yet. 8169

The Witness: I don't know anything about who the directors are. I could not give you a list of them.

RECESS UNTIL 2 P. M.

8170

AFTER RECESS.

William J. Burton, recalled for cross-examination.

By Mr. Machen:

Q. Look at the schedule, or the list, of stockholders of the Coal Sales Company and of the Railroad Company which has been offered in evidence, and tell us how many shares of stock in each of those two companies were at the dates of those lists held by each of the following gentlemen who are named as defendants in the petition? 8171
A. Edward T. Stotesbury, Daniel G. Reid, Charles Steele, Abram Nesbitt, George F. Baer, George F. Baker, Edward B. Smith, William H. Moore, Edward S. Moore, William H. Butler, Henry B. Coxe, Fred M. Kirby. The shares they held were as follows:

Edward T. Stotesbury, 10,000 shares of Lehigh Valley Railroad Company, 1,102 shares of Lehigh Valley Coal Sales Company; Daniel G. Reid, 40,000 shares of Lehigh Valley Railroad Company, 5,000 shares of Lehigh Valley Coal Sales Company; Charles Steele, 150 shares Lehigh Valley Railroad Company, no shares of Lehigh Valley 8172
Coal Sales Company; Abram Nesbitt, 750 shares Lehigh Valley Railroad Company, 93 shares Lehigh Valley Coal Sales Company; George F. Baker, 22,500 shares Lehigh Valley Railroad Company, 3,375 shares Lehigh Valley Coal Sales Company; George F. Baer, 15 shares Lehigh Valley Railroad Company, no shares of Lehigh Valley Coal Sales Company; Edward B. Smith, 500 shares Lehigh Valley Railroad Company, no shares Lehigh Valley

8173 Coal Sales Company; William H. Moore, 40,000 shares Lehigh Valley Railroad Company, 6,250 shares Lehigh Valley Coal Sales Company; Edward S. Moore, 1,800 shares Lehigh Valley Railroad Company, 175 shares Lehigh Valley Coal Sales Company; William R. Butler, 127 shares Lehigh Valley Railroad Company, 16 shares Lehigh Valley Coal Sales Company; Henry B. Coxe, 10 shares Lehigh Valey Railroad Company, no shares Lehigh Valley Coal Sales Company; Fred M. Kirby, 500 shares Lehigh Valley Railroad Company, no shares of
8174 Lehigh Valley Coal Sales Company.

Q. Do you know with what firm Mr. Stotesbury is connected? A. With the firm of Drexel & Company of Philadelphia.

Q. Will you look at the two lists respectively, and tell us how many shares of stock at the date of said lists were held in the railroad company and the coal company by the firm of Edward B. Smith & Company? A. Edward B. Smith & Company, Philadelphia, held 3,065 shares of Lehigh Valley Railroad Company stock; Ed-
8175 ward B. Smith & Company, of New York, held 495 shares of Lehigh Valley Coal Sales Company stock.

Q. Are these the same firm? A. I don't know.

Q. Mr. Edward B. Smith who is a director of the Railroad Company is the Edward B. Smith of Edward B. Smith & Company, isn't he? A. I don't know as to that.

Q. The address as given here of Mr. Edward B. Smith on the list of stockholders of the Railroad Company is the same as the address given for Edward B. Smith & Company, Philadelphia, is it not? A. It is almost the same; there is a slight difference.

8176 Q. State the difference then? A. In the case of Edward B. Smith the address is the northeast corner of Broad and Chestnut Steets, Philadelphia; in the case of Edward B. Smith & Company, it is Broad and Chestnut Streets, Philadelphia.

By Mr. Warren:

Q. Mr. Burton, are all these officers and employees of the Lehigh Valley Coal Sales Company devoting their time exclusively to the business of the Lehigh Valley

Coal Sales Company? A. I am, and everbody else is doing the same. 8177

Q. What I asked you was about the different officials, the President, the Vice-President, the Secretary and Treasurer, the Auditor and the various clerks, sales agents and employees of that company, do they devote their entire time to the business of the company? A. Yes, that is my understanding.

Q. Do you mean to qualify that by saying you don't know whether they are not, or do you mean that they are? A. They are. 8178

Q. Is there any commingling of the affairs of any concern, partnership or company, with the affairs of the Lehigh Valley Coal Sales Company to your knowledge?

Mr. Machen: Objected to as asking the witness' opinion on a conclusion of law.

A. None whatever.

Harry C. Barr, a witness called on behalf of the Lehigh Valley Railroad Company, being first sworn, testified as follows: 8179

Direct Examination by Mr. Boles:

Q. What is your business? A. I am sales manager for J. S. Wentz & Company, and the Midvalley Coal Company.

Q. What is their business? A. Mining and shipping coal.

Q. Anthracite? A. Anthracite. 8180

Q. Where is their office? A. Philadelphia.

Q. About what tonnage do they ship over the Lehigh Valley Railroad in a year? A. The Midvalley Company will ship 300,000, and J. S. Wentz & Company I should say about 125,000 to 150,000 tons per year.

Q. What proportion of that is sold at line points on the Lehigh Valley? A. I couldn't say without calling—a very small proportion to strictly line points; the greatest is shipped via the Lehigh Valley Railroad.

8181 Q. Does it compete with the Lehigh Valley Coal Sales Company? A. Yes.

Q. Where? A. Almost everywhere. That is, all the markets that can be reached by the Lehigh Valley coal; New England, Philadelphia, Tidewater and the rest—New York City.

Q. As far west as the Mississippi River and in the south? A. Yes, Virginia. I don't know as we sell down there very much. I never hear about very much down there.

8182 Q. Will you give us some idea how much tonnage you sell at line points on the Lehigh Valley Railroad? A. Do you count Perth Amboy as a line point?

Q. Well, there isn't much local coal sold there, is there? A. No, not much.

Q. Outside of Perth Amboy? A. I don't know; I should say maybe 100,000 tons a year.

Q. Do you find that there is an active competition as to the sale of coal at points on the line of the Lehigh Valley Railroad? A. Yes.

Q. Who are some of your competitors at those points?
8183 A. In fact, every shipper on the Lehigh Valley Railroad.

Q. Do you sell to various parties who have leases of trestles and who have coal yards in conjunction with sidings on the Lehigh Valley Railroad? A. We sell to a great many people who have yards on the Lehigh Valley Railroad. I don't know what their relations are with the railroad, or as to the yards.

Q. The Government in its case states that the Lehigh Valley Coal Sales Company dominates the market at certain points along the Lehigh Valley Railroad; what
8184 have you to say as to that? A. I don't know anything about it. There are some markets that we do not go into, but probably they sell all their coal; I don't know.

Q. You sell wherever you want to, don't you? A. We sell wherever we can.

Q. Don't you sell wherever you want to sell? A. No, sir, we do not.

Q. Why not? A. Because we don't. The prices are not such as we like to get sometimes.

Q. Not as high, you mean? A. Not as high as we would like to have; that condition is sometimes against us. 8185

Q. Have you ever noticed any unfair business treatment on the part of your competitors, and particularly the Lehigh Valley Coal Sales Company; in other words, has there been any unfair trade relations in that competition?

Mr. Machen: Objected to as asking a question of law.

8186

A. Not that I know of.

Q. What has been the treatment accorded you by the Lehigh Valley Railroad in regard to service? A. We have no complaint to make of the service at all.

Q. Have you ever been discriminated against that you know of? A. Not that I know of.

Q. Any prejudicial treatment practiced against your company that you know of? A. Not that I know of.

Q. Have you ever had any experience of any favors granted to any of your competitors that you did not obtain? A. No. 8187

Q. How long have you been in the coal business, Mr. Barr? A. I have been in the anthracite business for six years; since 1908.

Q. How long have your companies been in business? A. I know long before I knew anything about that. Probably 25 or 30 years. Longer than that, possibly.

Q. Have you or your concerns any relation to the Lehigh Valley Railroad other than as a shipper over the line? A. Not that I know of, no.

8188

Cross-Examination by Mr. Machen:

Q. You lease some of your coal lands from the New York and Middle Coal Field Railroad and Coal Company, do you not? A. I think the Midvalley possibly does. I am not familiar with that part of the work.

Q. When you said that you sold your coal wherever you wanted to, I suppose you meant you sold your coal wherever you wanted to on the lines of the Lehigh Val-

8189 ley Railroad or its connections, that is to say, the points to which they have joint rates? A. Yes.

Q. Did I understand you to say that you did sell every where you wanted to, or you did not sell every where you wanted to? A. We sell everywhere—I might say we sell everywhere we wanted to, but there are certain points we would like to sell we do not go into because it does not give good freight rates, and the difference in price of coal is such that we don't consider we would care to go into such market.

8190

By Mr. Boles:

Q. What are those points? A. Tidewater, for instance; while we do sell some coal at Tidewater, the coal does not return as much to the mine as the mine owners believe they should get.

Q. You go to all points on the line? A. Yes. There are in New England I think certain differences in the coal rates that we do not care to absorb.

Q. The points where you do not go, are the points where you would like to get higher prices for the coal?

8191 A. Yes. We don't go in there on account of the low price of the coal.

Q. Do you know of any contract or covenant that requires you to ship your coal over the Lehigh Valley Railroad?

Mr. Machen: I object. Mr. Barr said he was not familiar with the lease.

Q. I am asking you a specific detail now. (Question read.) A. There may be something in the lease. I don't

8192 know. I am not familiar with the terms of the lease.

Q. Has it been your practice to route your coal freely anywhere you want to? A. It has been, yes.

Q. During the years that you have been familiar with the business? A. Yes; we have had no restrictions at all.

By Mr. Machen:

Q. Both of your collieries are reached only by the Lehigh Valley Railroad Company alone, are they not? A. Yes.

Q. Have you ever given any routing directions the 8193
effect of which would be to give the Lehigh Valley Railroad a shorter haul than by another route to the same destination, or have you left the routing informally to the Railroad Company? A. I think we have in some cases routed shipments for short hauls.

Q. Where and when? A. As to when I could not say. I believe we have occasionally shipped coal to Baltimore, for instance, via Boston Junction, instead of via Phillipsburg; that would give a shorter haul, and it is our practice to give the long haul to the Lehigh Valley where 8194
we can.

By Mr. Boles:

Q. It is your practice because of your own desire, and not because you are under any obligation to do so? A. We are not under any obligation.

By Mr. Machen:

Q. You just stated you are not familiar with the lease, and you don't know that you are under any obligation; how can you then say it is not because of any obligation? 8195
A. I don't exactly understand what you are trying to get at.

Q. I say you have just said you are not familiar with the terms of the lease, and do not know whether you were under any obligation to ship this coal over the Lehigh Valley Railroad preferentially. A. We have to ship over the Lehigh Valley Railroad.

Q. You have shipped over the Lehigh Valley Railroad as an initial carrier because you had no other? A. No.

Q. And you are not familiar with the terms of the lease 8196
and I presume it is your endeavor to live up to all covenants contained in the lease, isn't it? A. I don't know that I have ever considered any covenants in the lease, but it is our desire, not only with the Lehigh Valley, but all other roads that we do business with, to give the road that serves our freight as much as we can.

Q. It is also your aim, I suppose, to live up to all your contracts? A. So far as I know, yes.

8197 By Mr. Boles:

Q. There is a lease in evidence in this case, Mr. Barr, which contains a covenant, a lease between the Lehigh Valley Coal Company and the Midvalley Coal Company, which contains a covenant that the Midvalley Coal Company shall route all its shipments over the Lehigh Valley Railroad; that lease is the one that we have been referring to. Have you ever been restricted in any way in choosing the route for your shipments? A. Not as a demand. We have had a request in a letter asking if
8198 we could not route shipments.

Q. From the freight solicitors? A. Yes.

Q. You have a great amount of visits from freight solicitors of the railroads, don't you? A. Yes.

Q. And of course you get a great many requests of that kind? A. We get considerable of them.

George N. Wilson, recalled:

8199 Direct Examination by Mr. Warren:

Q. Mr. Wilson, I want to ask you whether the executive officials of your company, the President, Vice-President, and Secretary and Treasurer, General Auditor, the coal sales agents wherever situated, and all employes of the company do or do not devote their time exclusively to furthering the interests of the Lehigh Valley Coal Sales Company? A. They do.

Q. Have they any other or different employment than that of any kind? A. They have not.

8200 Q. Do any of the gentlemen whose names I am about to read to you control and direct the policies and acts of your company? I will read the list: Eben B. Thomas, Lyman D. Smith, Edward T. Stotesbury, Daniel G. Reid, Charles Steele, Abram Nesbitt, George F. Baker, George F. Baer, Edward B. Smith, William H. Moore, Edward S. Moore, William R. Butler, Henry B. Coxe, or Fred M. Kirby.

Mr. Machen: Objected to as asking the witness' opinion as to a conclusion of law.

A. No, sir; Mr. Smith is a director. 8201

Q. One of seven men? A. One of seven.

Q. As such, does he run, direct and control the policy of your company, or has he ever attempted to? A. No.

Q. Is there any commingling of the affairs of your company with that of any company or any concern to your knowledge in any way, or in any shape or form?

Mr. Machen: Objected to for the same reason as stated above.

A. No. 8202

Cross-Examination by Mr. Machen:

Q. Mr. Lyman D. Smith is a member of your Board of Directors, as I think you testified; he invariably attends the meetings, does he not? A. Not invariably, generally.

Q. Do you know of any instance in which his vote has been recorded in opposition or against any resolution adopted by the Board of Directors of the Lehigh Valley Coal Sales Company? A. I do not. 8203

By Mr. Warren:

Q. Do you know of any instance in which the Board of Directors of the Lehigh Valley Coal Sales Company have recorded any action in the affirmative by reason of his insistence? A. I do not.

Q. Now, the Directors meet—I think I am right in saying—once a month? A. Yes, that is right.

Q. And between their meetings who is in control and direction of the acts and policies of the Lehigh Valley Coal Sales Company? A. I am. 8204

Q. And at the meetings, what are the meetings devoted to—I don't mean as to details, but to the interests and affairs of what company or companies, if they go outside of the Sales Company? A. The Lehigh Valley Coal Sales Company exclusively.

Q. Any other subject up for consideration at the Directors' meetings? A. Nothing more than the weather.

8205 Q. Did Mr. Smith, as one of your Board, ever undertake to suggest any matters in connection with the Sales Company that were not in line with the furthering and developing of that company, and for the best interests of its stockholders exclusively that you can recall, did he ever? A. He did not.

William T. Grier, recalled on behalf of the Lehigh
8206 Valley Railroad Company.

Direct Examination by Mr. Boles:

Mr. Boles: I offer in evidence the answer of the Lehigh Valley Railroad Company to the complaint of G. B. Markle & Company, Pardee Brothers & Company, Incorporated, and Weston, Dodson & Company, Incorporated, Interstate Commerce Commission Docket No. 5917.

Mr. Machen: Objected to as irrelevant and inadmissible evidence.

8207 Marked **Lehigh Valley Railroad Company Exhibit No. 92.**

Mr. Boles: I also offer in evidence Lehigh Valley Railroad Tariff Supplement No. 3 to the tariff, I. C. C.-D 509, effective June 1, 1913.

Marked **Lehigh Valley Railroad Company Exhibit No. 93.**

Q. Mr. Grier, is Tariff D-509, which I have just filed in evidence, the tariff which withdrew the free storage
8208 privilege at Perth Amboy? A. Yes.

Q. June 1, 1913? A. Yes.

Q. Will you explain why that privilege was withdrawn? A. The principal reason for withdrawing the tariff was the necessity——

Q. Not the tariff, the privilege? A. The privilege,—was a necessity which the Operating Department put forward for more room in order to prevent congestion of traffic. The second was, it was an old structure, and the cost of maintenance was continually increasing; and

the third was because of its old, dilapidated condition 8209
there was great danger of fire, and then in connection with those three reasons was the further fact that no other railroad coming into New York gave such privilege to shippers over their roads, and I felt that the shippers over our road were just as keen and active in securing competitive traffic as the shippers over other roads, and so we simply gave it up from a commercial standpoint also.

Q. Did anybody else protest against the withdrawing of this privilege outside of the Markle Company, Dod- 8210
son and Pardee? A. No, sir.

Q. And the Plymouth Coal Company? A. That is in the same case.

Q. Will you describe the transportation service coincident to putting coal in those bins and taking it out again? A. The cars would get down to Perth Amboy and be placed in the yard——

Q. The yard being where? A. About a half mile I should say west of the piers.

Q. And west of the city? A. West of the Perth Amboy main street. 8211

Q. West of the city of Perth Amboy? A. The westerly end of the city.

Q. Then the cars were hauled through the city? A. The cars had to be subsequently hauled through the city.

Q. And where? A. They would be taken to the stock piers which were separate and independent from the trans-shipping piers. The cars would be run upon these high piers and the coal dumped into the bins; the capacity of these bins was approximately 200,000 tons, and as the shipper would have occasion to forwad that 8212
coal or bring it up for transshipment by water, they would give orders to our shipping agent down there to take so many tons of his coal out of stock. We had running under the bins a tunnel with a railroad track in it, and had what we called tunnel cars. These cars would run under the gate or hopper of the large bins and the coal would be run into these tunnel cars to be switched back again to a connection with the tracks leading up to the trans-shipping piers, and they were then taken up on the trans-shipping piers and weighed at that place and

8213 run down on the pier to the chute through which the coal was dumped on to the vessel waiting at the pier.

Q. When did you place in effect demurrage charges at Perth Amboy? A. Concurrently with the effective date of the withdrawal of the free storage privilege.

Q. What was the necessity for so doing? A. The great accumulation of cars at Perth Amboy.

Q. Because of what? A. Failure of shippers to give orders for moving the coal or dumping it into boats.

Q. Why didn't you charge them for holding the cars?

8214 A. I didn't see any reasons why we shouldn't. We did, as soon as I could bring it about.

Q. And you could not bring it about until you did what? A. We had to abandon the free storage; it would be absolutely useless to put in demurrage and continue free storage.

Q. And you had to publish a tariff? A. Yes.

Q. Did other railroads previously have a free storage privilege at the port of New York? A. Not that I know of, no, sir.

Q. Any of the anthracite roads? A. Not that I know

8215 of, no, sir.

Q. What road previously to yours, established demurrage regulations and rules at New York Harbor, on anthracite? A. They all did. We were the last ones.

Q. And what road just before yours? A. The Lackawanna.

Q. And what road before that? A. I think it was the Erie.

Q. And what road before that? A. Central Railroad.

Q. Did ony one contest their tariff? A. Yes, Peale,

8216 Peacock & Kerr filed a complaint with the Interstate Commerce Commission on demurrage tariffs which the Central Railroad issued.

Q. Was an application made to suspend your demurrage tariff and your tariff withdrawing the storage privilege? A. That tariff contained at the same time the withdrawal notice, and the establishment of the demurrage, and the application was made, I think, primarily for the suspension of the tariff because of the demurrage feature, and we made a visit to the Commission and explained why——

Q. The Interestate Commerce Commission? A. Paid 8217
a visit to the Interstate Commerce Commission and explained the situation to them and the tariff was not suspended.

Q. You in person attended the hearing before the Suspension Board of the Interstate Commerce Commission? A. I did.

Q. And they refused to suspend the tariff? A. Yes.

Q. Was Weston, Dodson & Company represented? A. They were one of the applicants, I believe.

Q. And G. B. Markle & Company? A. Yes.

Q. Was any discrimination involved in the withdrawal 8218
of this free storage in the bins at Perth Amboy because of the existence of a lease of land at South Plainfield by which the Lehigh Valley Coal Sales Company operated its own storage plant?

Mr. Machen: Objected to as calling for the witness' opinion upon a question of law, now pending before the Interstate Commerce Commission.

A. There was an attempt made to inject that question 8219
when we withdrew this free storage privilege at Perth Amboy, but I could not see any at all. No one as yet has been able to show me where there has been any discrimination.

Q. Did you consider the point of a possible discrimination before you withdraw that storage privilege? A. Yes; we always do that before we make any move.

Q. And in your opinion, why was there no discrimination involved; please explain that. A. It was apparent on the surface; everybody was deprived of that privilege 8220
of putting coal in stock at Perth Amboy free. There was no endeavor to favor any one. They all had to comply with the regulation as published, and such other facilities which shippers might have had on the Lehigh Valley Railroad were of a character that any shipper could obtain, so far as the Lehigh Valley Railroad was concerned.

Q. Does the Lehigh Valley Railroad Company stand ready to lease any of its surplus and adjoining property to shippers upon the same basis as it leases to the coal

8221 Company at South Plainfield? A. Yes; offers of that kind have been made.

Q. And ever availed of by the shippers? A. No, sir.

Q. To what extent were your storage privileges availed of by the shippers when they were offered by the Railroad Company at former times? A. At Perth Amboy?

Q. Yes. A. Some of the shippers availed themselves of the privilege to an excessive extent to the detriment of others who were entitled to some space. Our allotment of space was based on the tonnage of the different
8222 shippers the previous year over the piers, and some of the shippers greatly exceeded their allotment by as far as 100 per cent., and other shippers, and I believe one of those who are complaining in this case which has just been referred to, and who was very vehement in his objection to the withdrawal of the privilege, stating the great harm it would work, for the twelve months previous to the cancellation of the tariff did not have one ton of coal in stock.

Q. Who was that? A. Weston, Dodson & Company.

8223 Q. He stated that here himself this morning. To what extent has the demurrage tariff and the withdrawal of this privilege benefitted the car movement on the Lehigh Valley Railroad? A. A great benefit. My recollection is that two months prior to the inauguration of the demurrage arrangement, and the withdrawal of the free storage privilege, there were something like thirteen or fourteen hundred cars standing at Perth Amboy waiting to ship over the piers, and the stockroom in the bins practically filled. Two months after the installation of the demurrage tariff the number of cars standing was ap-
8224 proximately four hundred.

Q. And what was the condition of the bins? A. No more coal was put in the bins, and it was naturally gradually reduced until now they are entirely empty, and are being taken down for the reasons I have stated.

Q. Because of the railroad's necessity of having the space for terminal development? A. Yes.

Q. Did Mr. Middleton advise you in person that he needed that property for terminal development? A. He did.

Q. And who is Mr. Middleton? A. He is Vice Presi- 8225
dent of the Lehigh Valley Railroad in charge of operation.

Q. And in charge of the construction and development of the company's facilities? A. Yes.

Q. How many different bins were in that trestle? A. I think there were over four hundred. I know there was a large number.

Q. What general benefit has inured from the better car movement of anthracite cars on the Lehigh Valley Railroad? A. It has had a tendency to make the car distri- 8226
bution freer and reduce to a minimum any possible shortage that may occur.

Q. Has it been the practice of the Lehigh Valley Railroad as far as possible to avoid the business of storage in transit or warehousing freight in transit on its own behalf in respect of every kind of commodity? A. I am not in position to say as far as all kinds of commodities are concerned, but the establishment of warehouses or stocking plants by the shippers I would consider an advantage to the railroad.

Q. In other words, you are glad to encourage the ship- 8227
pers to provide their own storage facilities? A. Yes.

Q. Why? A. Well, it gives us an opportunity of moving the coal along regularly and it prevents a shortage of cars in the winter time when the demand for coal is far in excess of the physical possibilities of supplying it, and the consequent loss to the railroad and the shippers on that railroad because they are unable to get their coal to the market when the demand is greatest, whereas, with the stocking facilities the coal is near the markets, and in some cases, ninety per cent. of the transportation service 8228
has already been performed, and a short movement is only necessary to market the coal from stock to its ultimate destination.

By Mr. Warren:

Q. Are you familiar with the usage by shippers of storage plants? A. On the Lehigh Valley Railroad, yes.

Q. I think you have stated—correct me if I am wrong—that to secure facilities coal storage plants are estab-

8229 lished by all the railroads hauling anthracite coal in considerable quantities? A. Established by the railroads?

Q. They are established in the sense that the land is leased to large shippers upon some basis of rental upon which either the land and improvements are leased, or the land is leased, and the shipper constructs a trestle or other form of facility, that is right, isn't it? A. Yes.

Q. That is what I say. Now, you are familiar with the usages that those facilities are put to by shippers, are you not? A. Yes.

8230 Q. Now, let us assume that there is a shipper of 40,000 tons or even 50,000 tons to Perth Amboy in—a client of yours I mean now, who is an active dealer in anthracite presumptively, therefore, selling some portion of his forty or fifty thousand tons in the calendar year in the market; what would you say as to the propriety from a commercial point of view and the shipper's point of view, of his undertaking to construct a storage plant and take care of that part of his shipments that he needed to retain control of in storage at different times in that calendar year? A. A shipper whose aggregate tonnage

8231 at Tidewater amounts to only 40,000 or 50,000 tons a year, if he is at all active and alive to competitive conditions, it seems to me it would be an expense on his part to establish any storage facilities because the rare occasions where he might require their use would not offset in my mind the expense of handling the coal in and out of stock, the degradation and expense of maintenance, interest on the investment, and so forth.

Q. And you don't know that such a shipper would have occasion to use a railroad plant at all in that calendar

8232 year, do you? A. With a tonnage of that kind and an active shipper, I would not think it would be necessary for him to provide storage facilities.

Cross-Examination by Mr. Machen:

Q. The offers of land for lease for storage plants which you spoke of were offers of unimproved land, were they not? A. Unimproved in what respect?

Q. I mean they were not built upon? A. The plants were not erected, no.

Q. The plants were to be erected by the proposed lessees? A. Yes. 8233

Q. Their leases also to be short term leases and subject to a right on the part of the railroad company to terminate them upon short notice, were they not? A. The leases were precisely on the same terms as the lease at South Plainfield.

Q. Which is subject to a right of termination on the part of the lessor on the same short notice? A. I believe it is.

Mr. Warren: I would like to object there; the counsel is asking the witness to interpret a document which on his theory of rules of evidence is incompetent. 8234

Q. Can you mention more than one such offer, even of unimproved land, which was made by the railroad company? A. The Lehigh Valley Railroad Company?

Q. Yes. A. I only know of one.

Q. That was to the Plymouth Coal Company? A. The Plymouth Coal Company. Oh, yes, we have offered the same privilege to other shippers verbally, but they never made any written application for it. 8235

Q. Who are the shippers? A. G. B. Markle & Company.

Q. Any others? A. I think that is all.

Q. So far as you know the Lehigh Valley Railroad then never offered to lease a completed coal storage plant to any person other than the Lehigh Valley Coal Company?

Mr. Boles: I object to that because it has not been shown that we have any to offer. 8236

A. No, sir.

Q. Was there not comparatively recently withdrawn a joint rate from the Lehigh Valley coal region to Baltimore via the Baltimore & Ohio Railroad? A. No, sir. There was a rate withdrawn about twenty-five years ago, I think—about nineteen years ago, something like that, but not recently.

8237 Q. You have no joint rate to Baltimore and Washington except by the Pennsylvania Railroad? A. That is all.

Q. Have you such joint rates in effect via the Pennsylvania Railroad from the Lehigh Valley coal regions? A. To Baltimore and Washington?

Q. Yes. A. Yes.

Q. Making the connection at Phillipsburg? A. Phillipsburg, and also routed via New Boston Junction.

8238 By Mr. Boles:

Q. Did the Plymouth Coal Company refuse the offer as to the leasing of land at South Plainfield because it did not have a stocking plant on it? A. Not to my knowledge, no, sir.

Q. Has the Lehigh Valley Railroad any stocking plant anywhere except the one at South Plainfield, which was erected in 1890? A. No, sir.

Q. Have you a tariff in effect which permits the switching of coal at Phillipsburg to dealers on the line of the Lehigh Valley which arrives at Phillipsburg over
8239 other railroads, *e. g.*, over the Pennsylvania Railroad? A. Yes.

Q. What is the effect of Tariff I. C. C. D-662? A. It means that the shippers on the Lehigh Valley Railroad can deliver prepared sizes of anthracite coal on the Central Railroad of New Jersey at Phillipsburg, New Jersey, at the same rate which is in effect from corresponding points to Phillipsburg, Lehigh Valley Railroad delivery.

By Mr. Machen:

8240 Q. Is there any tariff, any joint rate in effect from the collieries on or reached by the Central Railroad of New Jersey to Phillipsburg, New Jersey, Lehigh Valley Railroad delivery? A. Not at the present time. There was up until recently an arrangement whereby the Central Railroad of New Jersey absorbed our switching at 15 cents per ton. It was in effect for years, but no business moved under it, and the Central Railroad of New Jersey canceled it. While we canceled our switching tariff in connection with the Central Railroad of New Jersey, we issued a through tariff which amounts to the same thing

in the end to both the shipper and consignee located on the Central Railroad. 8241

Q. This joint tariff which you have referred to, I. C. C. D-662, applies only to prepared sizes and briquettes and boulets? It is not applicable, therefore, to steam sizes? A. No, sir, there was no such movement.

By Mr. Boles:

Q. You stand ready to put in a similar tariff as to all sizes if there is any demand for it? A. We are down to rice and barley size, and I question very much whether we would put in a tariff on rice and barley size, because the proportion demanded by the Central Railroad of New Jersey would not leave us a fairly compensatory rate. 8242

Mr. Boles: I offer in evidence the opinion of the Circuit Court for the Eastern District of Pennsylvania in the case of Interstate Commerce Commission against Lehigh Valley Railroad Company, reported in 74 Federal, 784, which was a decision dismissing the petition of the Interstate Commerce Commission on its application to enforce its order in the case of Coxe Brothers & Company *vs.* the Lehigh Valley Railroad Company, reported in 4 I. C. C. 8243

Marked **Lehigh Valley Railroad Company Exhibit No. 94.**

Mr. Boles: I also offer in evidence agreement made the 25th day of November, 1867, between the Central Railroad Company of New Jersey of the first part, Lehigh Valley Railroad Company of the second part, and A. Pardee & Company representing the Hazleton Railroad Company of the third part. I am asked to state by the Government that this agreement is no longer in effect, and was made at a time when a portion of the eastbound tonnage of the Lehigh Valley Railroad Company was delivered to the Jersey Central Railroad Company at Phillipsburg because the Lehigh Valley Railroad Company at that time had no outlet to Tide. 8244

8245 Marked **Lehigh Valley Railroad Exhibit No. 95.**

Mr. Boles: I also offer in evidence the minutes of an annual meeting of the stockholders of the Lehigh Valley Railroad Company held January 21, 1873.

Marked **Lehigh Valley Railroad Company Exhibit No. 96.**

Mr. Boles: I also offer in evidence extract from the minutes of a stated meeting of the Board of Directors of the Lehigh Valley Railroad Company
8246 on Tuesday, April 14, 1896.

Marked **Lehigh Valley Railroad Company Exhibit No. 97.**

Mr. Boles: I also offer in evidence extract from the minutes of a meeting of the Board of Directors of the Lehigh Valley Railroad Company held Thursday, November 14, 1865, and an extract from a meeting of the Board of Directors of the same company of November 13, 1866, and an extract from the minutes of a meeting of the Board of
8247 Directors of the same Company for December 11, 1866, as one exhibit.

Marked **Lehigh Valley Railroad Company Exhibit No. 98.**

DEFENDANT LEHIGH VALLEY RAILROAD COMPANY RESTS.

NOTE.—It is mutually agreed by counsel that any party to this cause may refer to and read from the report of the opinion of the Supreme Court of the United States in the case of the United States against Reading Com-
8248 pany, *et al.*, 226 U. S. 324, and 228 U. S. 158, and also from the opinion of the United States Circuit Court for the Eastern District of Pennsylvania in said cause as reported in 183 Federal Reporter, with the same effect as if said opinions were incorporated in the record at large, together with the decrees passed in pursuance of an opinion of the Supreme Court, copy of which was offered by the Government.

Hearing adjourned to Wednesday, August 5th, 1914, at 9:30 A. M.